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

February 26, 2013

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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 Clarence D. Rappleyea Building, 123 Main Street, White Plains, New York at approximately 11:00 a.m.

Members of the Board present were:

John R. Koelmel, Chairman
Eugene L. Nicandri, Trustee
R. Wayne LeChase, Trustee
Terrance P. Flynn, Trustee
Joanne M. Mahoney, Trustee – Syracuse

Trustee Jonathan Foster – excused

Gil C. Quiniones	President and Chief Executive Officer
Judith C. McCarthy	Executive Vice President and General Counsel
Edward Welz	Chief Operating Officer
Donald Russak	Chief Financial Officer
Joseph Kessler	Senior Vice President – Power Generation, Power Supply
Robert Lurie	Senior Vice President – Strategic Planning
James Pasquale	Senior Vice President – Economic Development and Energy Efficiency
Paul Tartaglia	Senior Vice President – Energy Resource Management
Joan Tursi	Senior Vice President – Corporate Support Services
Bradford Van Auken	Senior Vice President and Chief Engineer – Operations Support Services
Thomas Concadoro	Vice President and Controller
Sobeida Cruz	Vice President – Environmental Justice – SENY-Public and Governmental Affairs
Thomas Davis	Vice President – Financial Planning and Budgets
Dennis Eccleston	Vice President – Information Technology/Chief Information Officer
John Kahabka	Vice President – Environmental, Health and Safety
Joseph Leary	Vice President – Community and Government Relations
Patricia Leto	Vice President – Procurement
John Suloway	Vice President – Project Development Licensing and Compliance
Karen Delince	Corporate Secretary
Brian McElroy	Treasurer
Brian Liu	Deputy Treasurer
Bruce Fardanesh	Chief Electrical Engineer – Engineering
Khalil Shalabi	Chief Technology Officer and Director – Research and Development
Janis Archer	Director – Strategy Management – Strategic Management
Mike Lupo	Director – Marketing Analysis and Administration
Michael Saltzman	Director – Media Relations
Gerard Vincitore	Director – Resource Planning and Project Analysis
Gina Harwood	Manager – Corporate Finance
Timothy Muldoon	Manager – Business Power Allocations and Compliance
Gary Schmid	Manager – Network Services Infrastructure
Kerry-Jane King	Sustainability Manager – Special Projects and Business Integration
John Markowitz	Lead Research and Technology Development Engineer II
Jiankang Zhu	Research and Technology Development Engineer II
Ruth Colon	Senior Business Integration Project Manager
Brian Wilkie	Rotational BI Project Manager – Special Projects and Business Integration
Lorna M. Johnson	Assistant Corporate Secretary
Jillian Nelson	Associate Pricing & Power Contract Analyst – Marketing Analysis and Administration
Egle Travis	Senior Pricing Analyst – Marketing Analysis and Administration
Sheila Baughman	Senior Secretary – Corporate Secretary's Office
Charles Johnston	Senior Regulatory Security Specialist – Corporate Security

Trish Hennessy	Photographer – Video and Photographic Services
Michael Schneider	Contractor – Video Production Services
Lindsay Dean	National Urban Fellow – Special Projects and Business Integration
Sheri L. Mooney	Senior Vice President, Senior Programs Manager - First Niagara Financial Group
Jennifer Sanfilippo	Vice President, Government Relations – First Niagara Financial Group

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

Introduction

Chairman Koelmel welcomed the Trustees and staff members who were present at the meeting. He said the meeting had been duly noticed as required by the Open Meetings Law and called the meeting to order pursuant to the Authority's Bylaws, Article III, Section 3.

1. **Adoption of the February 26, 2013 Proposed Meeting Agenda**

On motion made and seconded, the meeting Agenda was adopted.

2. <u>Certificates of Appreciation</u>

Chairman Koelmel said that on behalf of the Trustees he wanted to commend six staff members who received Technology Transfer awards for research and development projects they worked on with the Electric Power Research Institute ("EPRI") and the Institute of Electrical and Electronic Engineers ("IEEE") and made the following remarks:

> ***"I am very pleased that the next action is to honor six NYPA employees with Certificates of Appreciation for their achievements following their award recognition from EPRI and IEEE, two industry groups. The awards are representative of the heavy emphasis that NYPA places on integrating innovative technologies and supporting a clean environment to ensure the reliable and efficient operation of its facilities.***
>
> ***The Board of Trustees and Executive Management take pride in the professionalism and achievements of the Authority's workforce. We are pleased to recognize today, the following individuals for embodying those qualities:***
>
> ***Bruce Fardanesh, Jiankang Zhu, John Markowitz, John Nowicki, Jonathon Mayette and John Nolan.***
>
> ***Congratulations again to all six awardees."***

3. <u>Consent Agenda</u>:

a. <u>Approval of the Minutes</u>

The Minutes of the Regular Meeting held on January 23, 2013 were unanimously adopted.

b. Energy Efficiency Educational Program in New York City Schools – Authorization to <u>Award Services Contract to Support Program</u>

The President and Chief Executive Officer submitted the following report:

<u>SUMMARY</u>

"The Trustees are requested to approve the award of a contract for an Energy Efficiency Educational Program in New York City Schools not to exceed the amount of $600,000 to Gove Group, Inc. located in Pittsburgh, Pennsylvania and the National Theater for Children located in Minneapolis, Minnesota, for a three-year term.

<u>BACKGROUND</u>

"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.

"In accordance with the Authority's Expenditure Authorization Procedures, the award of non-personal services, construction, equipment purchase or non-procurement contracts in excess of $3 million, as well as personal services contracts in excess of $1 million if low bidder, or $500,000 if sole-source or non-low bidder, requires the Trustees' approval.

"The United States Environmental Protection Agency ('EPA') defines environmental justice as 'fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.' Environmental justice describes the efforts to improve the living environment of low-income and minority communities.

"On April 24, 2012 the Trustee's approved the Environmental Justice Implementation Plan, which included implementing an Energy Efficiency Educational Program within Environmental Justice Communities working with schools in developing an educational curriculum for students in elementary schools. The curriculum will address where and how electricity is created and transmitted; energy conservation and alternative energy concepts. Communication has been held with the New York State Department of Education to describe the program in detail.

<u>DISCUSSION</u>

"On October 16, 2012, the Authority advertised in the New York State *Contract Reporter* a Request for Proposals ('RFP') (Q12-5358FS) soliciting firms interested in providing Energy Efficiency and Renewable Program Consulting Services. In response to the notice, 67 firms downloaded the RFP from the Authority's Web site.

"On November 7, 2012, eight firms submitted bid proposals for the program. The bids were reviewed by an evaluation committee consisting of staff from Public Affairs, Energy Efficiency, Marketing and Economic Development and Procurement divisions. The evaluations were based on a number of technical criteria specified in the RFP and the prospective Contractors' proposed costs. These criteria included the firm's relevant technical approach, experience in training educators, experience in implementing energy programs, project team organization and experience, proposal content and format, and proposed costs.

"Based on a thorough evaluation of the eight proposals, four firms were interviewed. The selection criteria were based on content, type of services to be offered, schedule and costs. As a result of proposed costs, scheduling, offered services and subsequent interviews and reference checks, Authority staff recommends the award of a contract to Gove Group, Inc. and the National Theater for Children because of their unique approach to the educational program. The proposed contractors will work with schools selected by the Authority, employing multiple approaches to provide education to the staff and teachers about energy and ensure that students learn and implement energy efficiency measures. This program will offer teachers, students, parents and communities an opportunity to learn about energy conservation, alternative energy and where energy comes from. Gove Group has served as the Implementation Contractor for the New York State Energy Research and Development Authority's ('NYSERDA') Energy Smart Students program from 2008 to 2012.

FISCAL INFORMATION

"Funding for the implementation of the Energy Efficiency Educational Program has been budgeted in the 2013-2016 budgets and will be provided from the Operating Fund.

RECOMMENDATION

"The Vice President – Public and Government and Regulatory Affairs and the Vice President – Environmental Justice recommend that the contract to Gove Group Inc. and the National Theater for Children for the Energy Efficiency educational curriculum be approved and should not exceed the $600,000 recommended in the Environmental Justice Implementation Plan approved by Trustee's on April 24, 2012.

"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 President and Chief Executive Officer, was unanimously adopted.

RESOLVED, That the Trustees authorize the President and Chief Executive Officer, the Vice President Public Government and Regulatory Affairs and the Vice President Environmental Justice to execute agreement and other documents between the Authority and Gove Group Inc. and the National Theater for Children; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things 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 Executive Vice President and General Counsel.

c. Proposed Direct Sale Contract for the Sale of Western New York Hydropower – Notice of Public Hearing

The President and Chief Executive Officer submitted the following report:

SUMMARY

"The Trustees are requested to authorize a public hearing, pursuant to Section 1009 of the New York Public Authorities Law ('PAL'), to approve a proposed form of contract applicable to certain Expansion Power ('EP') and Replacement Power ('RP') customers requiring a direct sale contract for the sale of hydropower commencing on July 1, 2013. These customers, who were awarded allocations the terms of which extend beyond June 30, 2013, currently take service under sale-for-resale contracts between the Authority, customers and the customers' local electric utility. Because the sale-for-resale business model will terminate on June 30, 2013 in favor of a direct sale arrangement between the customers and the Authority, new direct sale contracts are needed to facilitate the sale of hydropower for the remaining terms of such customers' allocations. The form of the proposed direct sale contract is attached as Exhibit '3c-A,' and the list of the customers that require such contracts, along with the respective allocations and supplemental commitments applicable to the allocations, is attached as Exhibit '3c-B.'

BACKGROUND

"Under PAL §1005(13), the Authority may allocate and sell directly or by sale-for-resale, 250 MW of EP and 445 MW of RP to businesses located within 30 miles of the Niagara Power Project, provided that the amount of EP allocated to businesses in Chautauqua County on January 1, 1987 shall continue to be allocated in such county.

"Since the late 1980s, the Authority's sales of EP and RP have been handled almost exclusively under contracts that the Authority entered into with Niagara Mohawk Power Corporation d/b/a National Grid ('National Grid') and New York State Electric and Gas Corporation ('NYSEG'), both of which facilitated the provision of Authority hydropower to end-use customers on a sale-for-resale basis. These contractual arrangements expire on June 30, 2013, and the Authority has made arrangements to continue the sale of the EP and RP allocations under a direct sale contract with each of the customers.

"The first significant step in this direction was made in September 2010 after a public hearing process, when the Trustees approved long-term contract extensions that accommodated direct sales to customers for approximately 185 EP and RP allocations for the period July 1, 2013 through June 30, 2020. The Trustees also approved a new service tariff governing all EP and RP sales commencing July 1, 2013, Service Tariff No. WNY-1 ('ST WNY-1'), which modified the production rate for EP and RP by applying a three-year phase-in to a specified target rate which is based on the Authority's Preservation Power rate.

"The form of contract proposed in this item would apply to six current EP and RP customers. These customers did not receive long-term contract extensions as part of the initiative identified above because (i) the allocations at issue were awarded after the period when the Authority offered long-term extensions, (ii) delivery for these allocations commenced after such period, or (iii) the customers declined long-term extensions. As a result, the allocations for these customers extend beyond the term of the soon-to-expire sale-for-resale contractual arrangements with the local utilities. The Authority would continue to sell these customers their allocations under a direct sale arrangement for the remaining term of the allocations.

"Transmission and delivery service for these allocations would continue to be provided by National Grid or NYSEG, as applicable, and in accordance with their filed service tariffs.

DISCUSSION

"The following is a summary of some pertinent provisions of the proposed form of contract:

- Consistent with other recent direct sale contracts that the Trustees have approved, this contract would provide for the direct billing of all production charges (*i.e.* demand and energy) as well as all New York Independent System Operator, Inc. ('NYISO') charges, plus taxes or any other required assessments, all as set forth in ST WNY-1.

- Each contract would include each customer's previously agreed-upon supplemental commitments (to be included in a schedule attached to each contract) with respect to employment, power utilization and capital investment. The Authority would retain the right to reduce or terminate customers' allocations if employment, power utilization or capital investment commitments are not met, as provided for in these commitments.

- Another contract feature includes the ability to award additional allocations of EP or RP to the customer at the same facility, which would be incorporated into Schedule A of the contracts. The Trustees approved this convention in the 2010 long-term extension contracts, and it is appropriate to be included here as it would simplify contract administration.

- To accommodate non-payment risk that could result from a direct billing arrangement with the Authority, the contract includes commercially reasonable provisions concerning, among other things, the ability to require deposits in the event of customer failure to make payment for any two monthly bills. This is consistent with recent Authority contracts that incorporate direct billing, including the Authority's Recharge New York sales contracts.

"The Authority is in the process of discussing the proposed contract with customers and anticipates receiving customer approval, especially given that each customer's supplemental commitments will not change, and the continued provision of the allocation cannot occur in the absence of an underlying sales agreement. Notably, applying ST WNY-1 rates to these customers effective July 1, 2013 puts them at no disadvantage vis-à-vis other EP and RP customers taking such service at that time.

"As required by PAL §1009, when the Authority believes it has reached agreement with its co-party, it is required to transmit the proposed contract to the Governor and other elected officials, and hold a public hearing on the contracts. At least 30-days' notice of the hearing must be given by publication once in each week during such period in each of six selected newspapers. Following the public hearing, the form of contract may be modified, if advisable. Upon approval of the final proposed contract by the Authority, the Authority must 'report' the proposed contract, along with its recommendations and the public hearing records, to the Governor and other elected officials. Upon approval by the Governor, the Authority may execute the contract.

FISCAL INFORMATION

"As stated above, the allocations associated with the proposed form of contract will be served commencing July 1, 2013 in accordance with ST WNY-1, which specifies a three-year rate phase-in to a target rate that is based on the Authority's Preservation Power rate. The impact of the fully implemented phase-in, absent the effects of the annual adjustment factor, would produce additional annual revenues.

RECOMMENDATION

"The Manager – Business Power Allocations and Compliance recommends that the Trustees authorize the Corporate Secretary to convene a public hearing on the form of the proposed contract with Replacement Power and Expansion Power customers and transmit copies of such proposed form of contract to the Governor and legislative leaders pursuant to PAL §1009. Staff will report to the Board of Trustees on the public hearing and the contracts and at that time make additional recommendations regarding the proposed contracts.

"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 President and Chief Executive Officer, was unanimously adopted.

> **RESOLVED, That the Trustees hereby authorize a public hearing on the terms of the proposed form of direct sale contract for the sale of hydropower and energy generated by the New York Power Authority commencing on July 1, 2013 for certain Replacement Power and Expansion Power customers, subject to rates previously approved by the Trustees; and be it further**
>
> **RESOLVED, That the Corporate Secretary be, and hereby is, authorized to transmit copies of the proposed form of contract to the Governor, the Speaker of the Assembly, the Minority Leader of the Assembly, the Chairman of the Assembly Committee on Ways and Means, the Temporary President of the Senate, the Minority Leader of the Senate and the Chairman of the Senate Finance Committee, pursuant to Public Authorities Law §1009(1); and be it further**
>
> **RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.**

4. Discussion Agenda:

a. Report of the President and Chief Executive Officer

President Gil Quiniones said that for the month of February the Authority had performed well operationally and financially as outlined in the Performance Scorecard. He added that, based on comments from the Trustees, the performance scorecard had been updated, the details of which would be outlined by Janis Archer and Robert Lurie later in the meeting.

New York Energy Highway

President Quiniones said that the Energy Highway Task force submitted its blueprint of recommendations on how to revitalize and upgrade the State's transmission infrastructure to the Governor in October last year. He said that some of the actions recommended in the blueprint have been launched, and by June 2013 all of the actions recommended are scheduled to be launched as follows:

- ***Energy Highway Blueprint issued (Oct 2012)***
- ***PSC Order to ease transmission constraints (Nov 2012)***
- ***PSC Order for Reliability Contingency Plan for Indian Point (Nov 2012)***
- ***PSC Order on extension of natural gas service (Nov 2012)***
- ***NYPA Board approved transmission life extension program (Dec 2012)***
- ***NYSERDA solicitation issued for renewable resources (Dec 2012)***
- ***PSC Order issued to evaluate repowering (Jan 2013)***
- ***Update Report prepared for Governor (Jan 2013)***
- ***Regional Greenhouse Gas Initiative (RGGI) -- states proposed lower emissions cap (Feb 2013)***

President Quiniones then gave a brief outline of some of the Board actions, some of which are required by statute and also the Authority's strategic plan, to be taken at the March Annual Meeting:

- ***Annual Report of Procurement Contracts and Annual Review of Open Procurement Contracts***
- ***Financial Reports and Audit Results***
- ***Annual Review and Approval of Guidelines and Procedures, including: corporate policy revisions, Enterprise Risk Management, new policies, et al.***
- ***Annual Review and Approval of Authority Policies***
- ***Annual Report of Investments***

- ***Strategic Plan submission***

President Quiniones ended by saying that he is confident the Authority is headed in the right direction for the year 2013.

In response to a question from Chairman Koelmel, President Quiniones said although the Authority's safety goals are aggressive, he is assured that the right safety measures will be implemented based on changes in the leading indicators which has been incorporated in the updated performance scorecard.

In response to further questions from Chairman Koelmel, President Quiniones said the launch of the actions recommended in the energy highway initiative blueprint is on schedule. The Authority will participate in the initiative; any action by the Authority will require the Board's approval. President Quiniones added that this initiative by the Governor for projects to address the state's aging transmission infrastructure will ultimately unblock the bottlenecks in the state's transmission infrastructure to make it more efficient and the Authority will play a significant role in helping to achieve those goals.

b. <u>Report of the Chief Operating Officer</u>

Mr. Joseph Kessler, Senior Vice President of Power Generation, provided highlights of the Chief Operating Officer' s report to the Trustees.

<u>Generation</u>

- ***Systemwide, Net Generation was slightly above projections for January***
- ***Generation market readiness was 99.7 percent in January, which is above the monthly target of 99.4 percent. Year-to-date generation market readiness was at 98.9 percent***
- ***No significant events during January***
- ***Operations DART(Days Away, Restricted and Transfer) Rate is 1.28 against a target of 1.08***

<u>Transmission</u>

- ***There were no significant unplanned transmission events in January***
- ***Transmission reliability in January was 96.81 percent; this was above the target of 95.17 percent***
- ***Year-to-date transmission reliability is 96.81 percent; this was above the target of 95.17 percent***
- ***Actual Transmission reliability performance trending well to a year-end target of 95.69 percent***

<u>KEY ISSUES:</u>

- ***St. Lawrence Unit 28 remains out of service due to rotor repairs. The unit is expected to return to service on March 15, 2013.***

<u>Safety:</u>

- ***Mr. Kessler said staff is statistically tracking and recording the Authority's safety performance and has performed Root-cause analysis ("RCA") for all recordable injuries and plans to perform RCA for near-misses. Staff is continually seeking ways to improve the Authority's safety culture and will report any significant steps in that regard to the Board***

<u>Environmental</u>

- ***There were two reportable environmental incidents in January 2013. The target for the year is 32.***

<u>Personnel/Succession Planning</u>:

- ***Operations have completed the interview process to choose the next Vice President of Transmission. A recommendation will be made to the Governance Committee at its next meeting.***

- ***Operations continue to work collaboratively with UWUA and IBEW as contract negotiations continue.***

<u>Global Sourcing and Quality Control</u>:

- ***With regard to the Board's concerns regarding Global Sourcing and Quality Control, Operations will provide a full report at the next meeting on some of the measures staff propose to take, going forward, to protect the Authority's interests (IP, QA, Costs, etc.) in procuring specialized equipment.***

c. Report of the Chief Financial Officer

Mr. Thomas Concadoro, Vice President and Controller, provided highlights of the financial report to the Trustees. He said the Authority started the year well financially.

- ***Net Income for January, prior to the State contribution, was $28.6 million, which was $10 million ahead of budget.***
- ***Margins on market-based sales were higher than budgeted primarily due to higher capacity and energy revenues resulting from higher prices. Positive variances were significant at Niagara, Blenheim-Gilboa and the Small Clean Power Plants.***
- ***Capacity prices increased significantly in January due to the closing of Dynergy's coal facility, Danskammer, removing approximately 500 MWs of capacity from the market.***
- ***Production at Niagara and St Lawrence was ahead of budget for January.***
- ***Operations and Maintenance expenses were on target for the month.***
- ***Early year positive trends in hydro production and prices will be monitored closely in setting future months' projections.***

Mr. Concadoro ended by saying that staff would be presenting the 2012 financial statements to the Audit Committee and Board of Trustees in March. The Authority's annual investment report will also be presented to the Board at that meeting. The presentations will include KPMG's audit reports and representatives from KPMG plan to attend the meetings.

In response to a question from Chairman Koelmel, Mr. Concadoro said the audit work was nearing completion.

Responding to questions from Chairman Koelmel and Trustee Flynn, Mr. Russak said that market prices reacted to the closure of the coal plant. In response to further questions from Trustee Flynn, President Quiniones said based on this reaction to market prices, operators who have mothball units will likely perform a financial analysis then make a determination on whether it is financially advantageous for them to re-enter the market or continue to mothball their plants. Responding to further question from Chairman Koelmel, Mr. Russak said the Authority's Energy Resource Management and Energy Risk groups will look for any potential to lock in some of these revenue streams.

5. Release of Funds in Support of the Western New York Power Proceeds Allocation Act

The President and Chief Executive Officer submitted the following report:

SUMMARY

"The Trustees are requested to approve the release of funds into the Western New York Economic Development Fund ('WNYEDF') representing the net earnings from unallocated Expansion Power and Replacement Power sold into the wholesale energy market for the period through December 31, 2013 as set forth in Chapter 58 of the Laws of 2012.

BACKGROUND

"On March 30, 2012, Governor Cuomo signed into law the Western New York Power Proceeds Allocation Act (the 'Act') which authorizes the Authority, as deemed feasible and advisable by the Trustees, to deposit into the WNYEDF net earnings from the sale of unallocated Expansion Power and Replacement Power from the Authority's Niagara power project. The Act repealed Chapter 436 of the Laws of 2010, which had amended the Public Authorities Law and the Economic Development Law, to create a somewhat similar program authorizing unallocated Expansion Power and Replacement Power to be utilized for WNYEDF benefits.

"The effective date for calculating the net earnings is August 30, 2010, the original effective date of Chapter 436 of the Laws of 2010. Net earnings are defined as 'the aggregate excess of revenues received by the power authority of the state of New York from the sale of expansion and replacement power and energy produced at the Niagara project that was sold in the wholesale energy market over what revenues would have been received had such energy been sold on a firm basis to an eligible expansion power or replacement power customer under the applicable tariff or contract.'

"The net earnings deposited into the WNYEDF will be utilized to fund economic development projects ('eligible projects') by private businesses, including not-for-profits, which are physically located within New York State and within a thirty-mile radius of the Niagara power project. Eligible projects are to support the growth of business in the state and thereby lead to increased tax revenues and job creation or retention. Eligible projects may include capital investment in buildings, equipment and associated infrastructure; research and development that benefits New York State; support for tourism and marketing and advertising for Western New York State tourism and business; and energy related projects as authorized under §1005(17) of Public Authorities Law.

"The Act also established the Western New York Power Proceeds Allocation Board ('Allocation Board') which consists of five members appointed by the Governor. The Allocation Board's responsibilities include establishing written procedures for reviewing applications and making recommendations to the Authority for the allocation of fund benefits to eligible projects. In reviewing applications for benefits, the Allocation Board shall employ the same criteria used for determining eligibility for Expansion, Replacement and Preservation Power allocations as provided in §1005 of Public Authorities Law including, but not limited to, the number of jobs and type of jobs created as measured by wage and benefit levels; business' long-term commitment to the region; amount of capital investment; and impact on competitiveness in the region. Upon recommendation of the Allocation Board, the Authority shall award fund benefits to an applicant, provided however, that upon a showing of good cause, the Authority shall have the discretion as to whether to adopt the Allocation Board's recommendation, or to award benefits in a different amount or on different terms and conditions.

DISCUSSION

"The Authority is requested, from time to time, to provide financial support to the State or for various other State programs. Any such transfer of funds must (1) be authorized by the Legislature; (2) be approved by the Trustees 'as feasible and advisable,' (3) satisfy the requirements of the Authority's General Resolution Authorizing Revenue Obligations dated February 24, 1998, as amended and supplemented ('Bond Resolution') and (4) as set forth in the Trustees' Policy Statement dated May 24, 2011, a debt service coverage ratio of 2.0 shall be used as a reference point in considering any such payments or transfers.

"The Bond Resolution's requirements to withdraw monies 'free and clear of the lien and pledge created by the Bond Resolution' are such that withdrawals (a) must be for a 'lawful corporate purpose as determined by the Authority,' and (b) the Authority must determine, taking into account, among other considerations, anticipated future receipt of revenues or other moneys constituting part of the Trust Estate, that the funds to be so withdrawn are not needed for (i) payment of reasonable and necessary operating expenses, (ii) an Operating Fund reserve for working capital, emergency repairs or replacements, major renewals or for retirement from service, decommissioning or disposal of facilities, (iii) payment of, or accumulation of a reserve for payment of, interest and principal on senior debt or (iv) payment of interest and principal on subordinate debt.

"On June 26, 2012, the Trustees authorized the release of up to $20 million in net earnings from the Operating Fund to the WNYEDF representing the then-estimated net earnings from inception through December 31, 2012 and such amount was deposited into the WNEDF.

"Staff is seeking authorization to deposit into the WNYEDF all additional net earnings through December 31, 2013 up to a total of $15 million. While it is estimated that approximately $10 million in net earnings will be generated based upon current levels of unused Expansion Power and Replacement Power and presently projected wholesale energy prices, the recommendation for up to $15 million reflects the potential volatility in market prices. If authorized by the Trustees, such net earnings would be deposited into the WNYEDF on at least a quarterly basis.

"Staff has reviewed the effects of the transfer of up to $15 million into the WNYEDF on the Authority's projected financial position and reserve requirements. In addition, in accordance with the Board's Policy Statement, staff calculated the impact of this transfer on the Authority's debt service coverage ratio and determined it would not fall below the 2.0 reference point level. Given the current financial condition of the Authority, its estimated future revenues, operating expenses, debt service and reserve requirements, staff is of the view that it will be feasible for the Authority to make the deposit of up to $15 million at this time.

FISCAL INFORMATION

"Since the passage of the initial legislation related to the WNYEDF (Chapter 436 of the Laws of 2010), the Authority has been accruing for this liability on a monthly basis. Provisions for the Authority's fiscal year 2013 deposits for this program were also included in the 2013 Operating Forecast approved by the Trustees in December 2012.

"Staff has determined that sufficient funds are available to provide up to an additional $15 million in support for WNYEDF benefits for the period ending December 31, 2013 and that such Authority funds are not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's Bond Resolution. Net earnings to be deposited into the WNYEDF for periods beyond December 31, 2013 will be requested of the Trustees at a later date.

RECOMMENDATION

"The Treasurer recommends that the Trustees affirm the deposit of up to $15 million into the Western New York Economic Development Fund is feasible and advisable and to authorize such deposit through December 31, 2013.

"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. Brian Liu presented highlights of staff's recommendation to the Trustees. In response to a question from Chairman Koelmel, Mr. Pasquale said that the first meeting of the Western New York Power Allocation Board ("WNYPAB") will be held on Monday, March 4, in Buffalo, New York. He continued that the Board will not be approving any recommendations; rather they will be reviewing and approving the By-laws, guidelines and

procedures, the form of the application and other administrative matters. In response to questions from Chairman Koelmel andTrustee LeChase, Mr. Pasquale said the WNYPAB will make recommendations for approval by the Authority's Board of Trustees. The WNYPAB will work collaboratively with the REDC, ESD and the Authority.

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

RESOLVED, That the Trustees hereby authorize the release of up to $15 million from the Operating Fund to the Western New York Economic Development Fund as authorized by Chapter 58 of the Laws of 2012 and as discussed in the foregoing report of the President and Chief Executive Officer; and be it further

RESOLVED, That the amount of up to $15 million to be used for the Western New York Economic Development Fund benefits described in the foregoing resolution is not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further

RESOLVED, That as a condition to making the releases specified in the foregoing resolutions, on the day of such payment the Treasurer or the Deputy Treasurer shall certify that such monies are not then needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer, the Executive Vice President and General Counsel, the Executive Vice President and Chief Financial Officer, the Corporate Secretary, the Treasurer and all other officers of the Authority be, and each of them hereby is, authorized and directed, for and in the name and on behalf of the Authority, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents that they, or any of them, may deem necessary or advisable to effectuate the foregoing resolutions, subject to approval as to the form thereof by the Executive Vice President and General Counsel.

6. Decrease in Westchester County Governmental Customer Rates – Notice of Adoption

The President and Chief Executive Officer submitted the following report:

SUMMARY

"The Trustees are requested to approve a modification in the rates for the sale of firm power to the Westchester County Governmental Customers ('Customers') in 2013. This proposed action is consistent with the rate-setting process set forth in the Supplemental Electricity Agreements executed by the Customers and the Authority and in accordance with the State Administrative Procedure Act ('SAPA').

"This proposed final action seeks approval to decrease the production rates of the Customers by 3.21% as compared to 2012 rates. This change will take effect beginning March 1, 2013.

BACKGROUND

"At their meeting of September 24, 2012, the Trustees directed the publication in the *New York State Register* ('*State Register*') of a notice that the Authority proposed to decrease the production rates by 2.49%. The *State Register* notice was published on October 10, 2012. In accordance with SAPA, a forty-five day comment period was established, ending on November 26, 2012. This comment period was extended through December 28, 2012. There were no public comments received. Since this proposal called for no rate increase to the Customers, in accordance with the Authority's policies and procedures, no public forum was held.

DISCUSSION

"Based on further staff analysis, the final projected 2013 Cost of Service ('COS') is $34.29 million and the projected 2013 revenues based on 2012 rates are $35.42 million, resulting in an over-recovery of $1.14 million or 3.21%. This represents an additional decrease of 0.72% from the proposed rate decrease discussed at the September 2012 Trustee meeting.

"The decrease from the preliminary COS is primarily attributable to decreases in the operations and maintenance costs. In addition, the final 2013 COS incorporated an updated 2013 sales and revenue forecast. The final revenue forecast resulted in $0.22 million decrease of projected 2013 revenues as compared to the preliminary 2013 COS.

"Staff is proposing a 3.21% reduction in base production revenues through customer rates to reflect the continued reduction in the purchased power energy costs as contained in the currently effective 2012 rates.

"In 2013, the Customers will continue to be subject to an Energy Charge Adjustment under which the Authority passes all actual variable costs to the Customers. This cost-recovery mechanism employs a monthly charge or credit that reflects the difference between the projected variable costs of electricity recovered by the tariff rates and the monthly actual variable costs incurred by the Authority.

"The current 2012 and final 2013 proposed rates with the 3.21% overall reduction in revenues are shown in Exhibit '6-A.'

FISCAL INFORMATION

"The adoption of the 2013 production rate decrease would have no net effect on the Authority's financial position. The rate change would result in an estimated reduction in revenues of $1.14 million, which is offset by the forecasted reduction in costs. The Energy Charge Adjustment mechanism will protect the Authority's net revenues from the effects of movements in variable costs above those projected.

RECOMMENDATION

"The Director – Market Analysis and Administration, recommends that the Trustees authorize the Corporate Secretary to file a Notice of Adoption with the New York State Department of State for publication in the *State Register* of a decrease in production rates for the Westchester County Governmental Customers.

"It is also recommended that the Senior Vice President – Economic Development and Energy Efficiency be authorized to issue a written notice of adoption to the affected customers.

"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. Mike Lupo presented highlights of staff's recommendation to the Trustees. In response to a question from Chairman Koelmel Mr. Lupo said this reduction is efficiency driven in that purchased costs increases some efficiencies and reductions in O&M expenses. He continued that if purchased power declines further the Authority has a mechanism to pass that decrease and variable cost on to customers. Mr. Lupo added that the Energy Charge Adjustment process allows staff to adjust rates without coming back to the Board to further decrease the rates.

Responding to further question from Chairman Koelmel, Mr. Lupo said that staff generally pass the message on to the customers with whom they work; sometimes a press release is issued in actions such as this. President Quiniones added that the message is also that the Authority has been good stewards in managing the supply portfolio of its governmental customers. When energy prices are low, the Authority will make appropriate adjustments to reflect those low conditions to its governmental customers in New York City and Westchester.

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

RESOLVED, That the Senior Vice President – Economic Development and Energy Efficiency or his designee be, and hereby is, authorized to issue written notice of this final action by the Trustees to the affected Customers; and be it further

RESOLVED, That the Corporate Secretary of the Authority be, and hereby is, directed to file such notices as may be required with the New York State Department of State for publication in the *New York State Register* and to submit such other notice as may be required by statute or regulation concerning the rate decrease; and be it further

RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver

any and all certificates, agreements and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.

7. Decrease in New York City Governmental Customer Fixed Cost Component – Notice of Adoption

The President and Chief Executive Officer submitted the following report:

SUMMARY

"The Trustees are requested to take final action to approve a decrease in the Fixed Cost component of the production rates by $5.4 million or 3.4%, not including Astoria Energy II ("AE II") plant expenses, to be charged in 2013 to the New York City Governmental Customers ("Customers"). The decrease would be effective with the March 2013 billing period.

BACKGROUND

"At their September 24, 2012 meeting, the Trustees directed the publication in the *New York State Register* (*"State Register"*) of a notice that the Authority proposed to increase the Fixed Costs component of the production rates to be charged in 2013 to the Customers. The *State Register* notice was published on October 10, 2012 in accordance with the State Administrative Procedure Act ("SAPA"). The public comment period was due to expire on November 26, 2012, but was extended through December 28, 2012 by NYPA via written notice to the Customers in order to accommodate possible Customer time constraints caused by Hurricane Sandy. The City of New York ("City"), Metropolitan Transportation Authority ("MTA"), New York City Housing Authority, New York State Office of General Services, and Port Authority of New York and New Jersey, of the eleven SENY Customers, filed formal written comments on December 17, 2012.

"As indicated in the September 24th memorandum to the Trustees, under the Customers' Long Term Agreements ("LTAs"), the Authority must establish Fixed Costs based on cost-of-service ("COS") principles and may make changes only under a SAPA proceeding with the approval of the Trustees. As the memorandum also indicated, the LTAs establish two distinct cost categories: Fixed Costs and Variable Costs. Fixed Costs include Operation and Maintenance ("O&M"), Shared Services, Capital Cost, Other Expenses (i.e., certain directly assignable costs) and a credit for investment and other income.

DISCUSSION

"Based on Customer comments received and staff's analysis, the final decrease in Fixed Costs sought by this action is $5.4 million. This represents a $9.2 million decrease from the proposed Fixed Costs estimate discussed at the September 24, 2012 Trustee meeting. Under the LTAs, Customers' concerns must be considered in a confidential process prior to presenting any proposed changes to the Fixed Costs to the Trustees or issuing them for public comment. Numerous Customer data requests were presented to staff, and in all cases responses to relevant questions were provided to the Customers.

"In addition, as part of the SAPA process, the New York City Governmental Customers ("NYCGCs") submitted formal written comments to NYPA, which are attached as Exhibit "7-A." In their comments, the NYCGCs took the position that the 2013 Fixed Costs are "overstated" and "the period of time over which the fixed costs are collected from the NYCGCs should be lengthened." The NYCGCs are requesting that the 2013 Fixed Cost be reduced by some $54.5 million.

1. Staff Analysis of Public Comments on Fixed Costs and Recommendations

"Below is staff's analysis and recommendations addressing the public comments received on the Fixed Costs proposal, which are included in Exhibit "7-A."

"First, staff provides a review of the recently concluded annual process with the NYCGCs that led to the proposed 2013 Fixed Costs and the Final 2013 COS. Second, staff provides its analysis and recommendations regarding six issues raised by the NYCGCs in their comments filed on December 17, 2012.

"Staff Review of the 2013 LTA Annual Process: During this cycle of the LTA's annual process, NYPA staff has provided the Customers with abundant verifying information via the issuance of a comprehensive Preliminary 2013 COS and its' accompanying, explanative, staff report and by responding to numerous data requests made during the discovery process.

"After distribution of the Preliminary 2013 COS on June 1, 2012, the City and the MTA submitted numerous discovery requests. There were 40 discovery requests put forth by the City, many of which contained multiple parts resulting in a total of 85 responses and analysis being provided to the City. The MTA issued 6 data requests that were answered. All responses and analyses were provided over various points during July and August.

"In addition to the formal data discovery, NYPA staff conducted conference calls with the NYCGCs and their consultants on various COS issues. On August 23, 2012, pursuant to the terms of the LTA, NYPA and the NYCGCs teleconferenced on Fixed Costs. Particular focus was placed on the O&M and Shared Services expenses with the NYCGCs voicing concerns over the level of Fixed Costs, the payback period of certain non-recurring costs, and the amortization of certain debt service expenditures. The NYCGCs also voiced concerns about NYPA's inability to provide them with final budget numbers or detailed back-up to the preliminary estimates. Minutes were taken at this meeting and subsequently distributed to all attendees for feedback and concurrence. An additional 16 data requests were generated from this meeting and responded to by NYPA staff through three informational memoranda dated September 14, 2012, September 21, 2012 and October 17, 2012.

"The following is a summary of the NYCGCs comments filed under SAPA proceedings and NYPA's responses.

Issue 1: Final COS Budget Data

Comments: The NYCGCs commented that NYPA would be refining the proposed 2013 Fixed Cost figures over the summer of 2012 and presenting more accurate Fixed Cost information to the Board at is September 2012 meeting. They also indicated that NYPA was going to provide this updated information to the NYCGCs once it was reviewed with the Board. They also requested a reconciliation of the difference between the Fixed Costs increase included in the Preliminary COS of $6.3 million versus the $3.9 million included in the SAPA notice.

Staff Analysis: There seems to be Customer confusion about the timing of the SAPA notice versus the timing of the approval of the Final Budget. As communicated in an e-mail to the NYCGCs on August 29, 2012 and explained further in the September 14, 2012 informational memorandum, the SAPA notice, which is based on the Preliminary COS, was approved by the Trustees at the September 24, 2012 Board Meeting. The final proposed budget, however, was to be reviewed by the Trustees beginning late November and would be approved at the December Board meeting. They were also advised that the Fixed Cost component of the 2013 COS would be adjusted as soon as those numbers were available. As staff has explained to the Customers, the Authority's annual budget cycle, which is finalized near the end of the year, is not "in sync" with the rate-making and discovery process that occurs in accordance with the requirements of the LTA, which takes place mid-year. As a result, NYPA can only provide preliminary budget estimates during the discovery process since NYPA's budget process for the upcoming fiscal year begins after the Preliminary COS is finalized in May. The Fixed Costs included in the Preliminary COS are estimates of what NYPA expects in the upcoming fiscal year based on known events, historical spending patterns and inflationary factors. Since SAPA rules dictate that total Fixed Costs cannot increase beyond what was included in the original SAPA notice, the NYCGCs are assured that total Fixed Costs in the Final COS will not be higher than these estimates and have historically been significantly lower. This procedure is similar to prior years, has been discussed with Customers in prior years, and was again discussed with the Customers during the August 23, 2012 LTA teleconference and reiterated in an e-mail correspondence of August 29, 2012 and informational memorandum dated September 14, 2012.

The difference between the Fixed Cost increase included in the Preliminary COS of $6.3 million and the SAPA notice of $3.9 million was a change resulting from comments received from the NYCGCs during the August 23, 2012 LTA teleconference. At that meeting the Customers had requested that NYPA recover certain Hurricane Irene costs over multiple years similar to what was done for the Rate Study costs and other non-recurring Fixed Cost items. In response to this, NYPA adjusted the Fixed Costs totals contained in the SAPA notice to reflect the amortization of Hurricane Irene Costs over three years, without interest, rather than one year as originally proposed in the 2013 Preliminary COS. This change, and the fact that it was being reflected in the SAPA notice, was relayed to the Customers in an e-mail dated August 29, 2012 and an informational memorandum dated September 21, 2012. Since that time, NYPA has reduced these costs even further, crediting the Customers in the 2013 Final COS with $.6 million in Federal Emergency Management Assistance ("FEMA") reimbursements received and anticipated for Hurricane Irene.

Recommendation: Since all of the requested information has been provided, and the current year process was consistent with past practice, there are no recommendations for this issue.

Issue 2: Poletti Related Expenses

Comment: The anticipated cost of decommissioning and dismantling the Poletti Project ("Poletti"), which served these Customers' needs since the Project's in-service date in 1977, is being amortized over a number of years at a level of $3.9 million per year. The NYCGCs assert that the annual contribution of $3.9 million should be removed from the COS due to the recent contract award of $20.6 million as recently approved by the Board of Trustees. They indicate that this, together with the $12.2 million that has been previously spent, will bring the total decommissioning costs to $32.78 million, which is less than the $37 million collected. The Customers also questioned whether they have been credited with the $1.3 million in salvage value related to the decommissioning of the plant. Lastly, they questioned why the $1.33 million for inventory costs amortization was not charged to the asset retirement fund.

Staff Analysis: The current estimate for the Poletti Decommissioning Program including the Demineralized Water Plant is $45.9 million which includes all awarded and anticipated contracts required to implement and complete the program including contingencies and net of any salvage value to be credited to this project including the $1.3 million referenced in the NYCGCs comments. As relayed to the NYCGCs during the August 23, 2012 LTA teleconference and in the informational memoranda of September 14 and October 17, 2012, the contractors bids include a credit for recoverable salvage value. The $32.78 million referenced in the NYCGCs comments refers to the total projected spending in 2012 for this project together with the bid award of $20.6 million which was considered by the Trustees at their September 2012 Trustee meeting for Poletti Power House deconstruction. As of December 31, 2012, NYPA has collected $37.3 million from the NYCGCs, resulting in an outstanding balance to project completion of $8.6 million. In honoring the Authority's previous commitment to lower the annual contribution if actual costs were lower than initial projections, the remaining balance of $8.6 million has been amortized over the next five years resulting in a reduced annual payment of $1.8 million from the current of $3.9 million. The annual savings to the NYCGCs is $2.1 million and has been reflected in the 2013 Final COS. This item will continue to be revisited and adjusted as the decommissioning project continues.

The inventory dollar amount in question represents purchases of inventory items that were anticipated to be needed during the time of the Poletti's operation, but which still remained after the project's closing and could not be liquidated. The inventory costs incurred were operational in nature. Conversely, the Asset Retirement Obligations Fund was set up for costs related to the decommissioning of the physical building and not for recovery of costs incurred during the operating life of the plant. Since the inventory purchases were made for anticipated operational needs, NYPA has correctly not utilized the Asset Retirement Obligations Fund for their recovery.

Recommendation: Staff recommends that, due to the lower estimates for the decommissioning of Poletti, the NYCGCs annual contribution be reduced to $1.8 million from the current $3.9 million in the 2013 Final COS, and that the inventory costs amortization of $1.33 million remain as a separate cost component since the purchases were legitimately incurred to facilitate Poletti's operation when the plant was still active.

Issue 3: Fixed Costs for the 500MW

A. Level of Expenses at the 500 MW

Comment: The NYCGCs comment that Fixed Cost levels associated with the 500 MW facility have been increasing over the past several years while the net sales and revenues associated with the facility have been decreasing. Based on the analysis presented, the NYCGCs are projecting losses of $11 million in 2013 for the 500 MW facility. The Customers indicate that this will be greatly improved if "NYPA…extends the recovery period of the debt service associated with the 500 MW facility to match its projected service life, the annual Fixed Costs to the Customers would be reduced significantly and the economics would improve dramatically." The NYCGCs indicate that the savings to the COS in 2013 would be approximately $31-37 million depending on the amortization schedule used.

Staff Analysis: It is not a valid argument to look at the profitability of one generating unit against near-term spot market prices to determine its economic feasibility. These generating units are a hedge against the total cost of serving the energy needs of the NYCGCs and cannot be evaluated in the isolate. Moreover, the existence of the 500 MW combined cycle unit in 2006 has had a dampening effect on energy and capacity market prices and without this facility the prices to supply electricity to NYCGCs would have been significantly higher.

It is also important to recognize that amortizing the principal and interest payments over more years than the current life of the bonds does not make a facility more "profitable" in a given year since the debt will still need to be paid by NYPA in accordance with the existing schedule. At this time, NYPA bears a certain amount of risk on these bonds since they currently mature in 2021-2025, which is well past the expiration of the LTA in 2017. What the Customers are asking is for NYPA to further defer recovery of a significant amount of the actual debt service payments until after the expiration of the current LTA, thereby causing the Authority to take on even greater risk on approximately $30 million each year until the expiration of the LTA. If the Customers would like NYPA to extend the existing repayment period beyond the current amortization schedule, this can certainly be discussed during any prospective contract negotiations for the renewal of the current LTA.

In addressing the Customers' proposal, the Final COS includes amortization of the variable rate portion of the 500 MW debt over 25 years versus the 20-year assumption included in the Preliminary COS and in prior years. Unlike the outstanding fixed rated debt (see discussion in Staff Analysis below), the schedule of retirement of principal on Variable Rate Debt can be adjusted and extended by the Authority. In this manner, the rate recoveries will continue to match the cash costs incurred by the Authority. This represents a $6.8 million cost reduction to the Customers in 2013 and has been reflected in the 2013 Final COS.

B. Refinancing of 500 MW Fixed Rate Debt

Comment: The Customers requested that NYPA evaluate the possibility of refinancing the outstanding fixed rate bonds Series 2002A, 2007C and 2011A for the 500 MW facility. Although, the Customers recognize that these bonds have been previously refunded and are therefore not eligible for further refinancing, they requested that NYPA still explore this possibility given the "realities of the marketplace."

Staff Analysis: The majority of the Series 2002A bonds were refunded in October 2007 (Series 2007C bonds) and in October 2011 (Series 2011A bonds). The combined refundings resulted in gross savings of approximately $14.9 million and net present value savings (at the date of issue) of approximately $11.3 million, which are already being passed on to the Customers. In accordance with Federal Tax Regulations, the refunding issues (Series 2007C and 2011A bonds) are no longer eligible for advanced refunding. The only remaining Series 2002A bonds mature in November 2013.

C. Decommissioning Costs

Comment: The NYCGCs commented on the level of costs currently estimated for the eventual decommissioning of the 500 MW facility. At this time, they are contributing $3.8 million towards a decommissioning cost that was estimated at $60 million in expected costs in 2000 dollars. They indicate that "given the amount of the contract the Board recently approved for the deconstruction of Poletti, it is likely that NYPA's estimate for decommissioning the 500 MW facility is overstated. It is their opinion that "due to the modern construction method used for the 500 MW, the costs of decommissioning should be equal or less than that of Poletti."

Staff Analysis: Due to the high volatility of such costs it is difficult to predict with certainty what the actual costs will be at the time of the 500 MW's decommissioning. Although the current estimate for the decommissioning of the Poletti site is $45.9 million, these quotes were obtained in a very soft construction market and the 500 MW decommissioning is approximately 20 or more years away. As with Poletti, if the costs to decommission the 500 MW site come in lower than those currently being projected, the collection period of these monies will either be truncated or the annual Customer contribution reduced, depending on the monies needed at the time.

D. GE Litigation Expenses

Comment: The Customers have claimed that NYPA has not provided the requested information regarding the expenses related to the GE litigation. They assert that the legal fees associated with the case equates to approximately 3,460 to 5,200 hours of work.

Staff Analysis: In the December 2011 Trustee item, NYPA staff committed to providing the Customer with the billing rates and any other disclosable information on the costs of the GE litigation as soon as possible. This requested information was sent to the NYCGCs on January 27, 2012 and again on November 2, 2012 in response to an October 31, 2012 e-mail received from one of the NYCGCs consultants. Inexplicably, the Customers failed to reflect the receipt of this information in their filed comments. This information included law firm billing rates, consultant costs of DMJM-Harris and URS Corp., and an accompanying response letter to the City describing the back-up information being provided. The issues involved in the GE litigation were technical in nature and the law firm handling the case needed significant assistance from engineering and construction consultants to perform the necessary analyses. As indicated in this back-up documentation, of the $2.6 million in total costs for the GE litigation, 63% represented engineering consultant costs that were needed to substantiate NYPA's claim against GE and its subcontractors, and were not for legal fees.

Recommendation: In response to the NYCGCs request, staff recommends that the amortization of the variable rate debt on the 500 MW be extended an additional five years for a $6.8 million savings to the 2013 COS. Staff does not recommend any further changes to the costs related to the 500 MW for the reasons stated above.

Issue 4: Non-recurring costs

A. Amortization of Certain Costs

Comment: NYCGCs have cited $6.5 million in non-recurring costs that are included in the 2013 Preliminary COS that they believe are "capital" and not "operating" and should therefore be paid back over the life of the asset rather than a one-year period as included in the 2013 Preliminary COS.

Staff Analysis: During staff's August 23, 2012 LTA teleconference and in a follow-up informational memorandum dated September 14, 2012 NYPA explained that whether an expense is considered "capital" or "operating" is determined by NYPA's accounting classifications and in accordance with that, these costs were determined to be "operating." NYPA maintains its books and records in accordance with generally accepted accounting principles and its annual financial statements are audited by independent public accountants. NYPA follows utility accounting practice when determining whether an expenditure is a "capital" or "maintenance" expense. Costs incurred in connection with additions or replacements of minor items of property are accounted for as "maintenance" and therefore included in the operating budget, recoverable in one year.

However, as in past years, staff indicated that the Authority would be willing to consider spreading the payback of some of these costs over a multiple-year period as requested by the Customers. NYPA staff reviewed this issue and in an informational memorandum sent to the Customers on September 21, 2012, relayed to the Customers that "NYPA has agreed to amortize Hurricane Irene costs over three years and will be reflecting this change in the SAPA notice." In addition, NYPA agreed to forgo charging the Customers any interest that would normally accrue with such an amortization. This change represented $4.5 million of the $6.5 million being questioned. The remaining $2 million, although for non-recurring items, would not yield any savings to the Customers since these amounts are in line with what NYPA typically includes in the COS each year, and, over the long-term, would only result in the Customers paying this annual amount plus interest.

B. Request to "True-up" Storm Related Expenses

Comment: Related to this, the NYCGCs expressed concern that there was no "true-up" for storm related expenses when they are included in the COS before the work is done.

Staff Analysis: Since NYPA has agreed to spread the costs related to Storm Irene over three years, payments from the Customers can easily be adjusted next year if actual costs are less than the original estimates. In addition, NYPA has credited the Customers with $.6 million from FEMA reimbursements received for anticipated costs for Hurricane Irene. These reimbursements are for work already done and not previously included in prior years' COS.

Recommendation: Staff recommends that, in response to the NYCGCs comments, Hurricane Irene costs be amortized over three years without interest. As part of this amortization, NYPA will adjust any future payments towards Hurricane Irene costs to reflect actual expenditures once they are fully known.

Issue 5: Small Hydro - Operations & Maintenance Expenses

Comment: The NYCGCs comment on the expenses of NYPA's Small Hydro facilities claim that they perform poorly from an economic perspective as compared to the 500 MW Project. They also request that NYPA conduct an audit of these facilities to see whether there are any cost savings measures that can improve their profitability. Lastly, they request that the Kensico facility be removed from the 2013 Final COS in light of its recent closure.

Staff Analysis: The comparison of NYPA's Small Hydro facilities to the 500 MW is a difficult one since the 500 MW is a single natural-gas fired unit while the Small Hydro Facilities are five water-level dependent plants dispersed throughout the State. There are many factors, unique to each of the facilities, which must be considered before such comparisons can be considered.

NYPA's O&M facility budgets reflect the resources deemed necessary to reliably operate and maintain each plant in a given year. The Small Hydro Facilities are remotely operated facilities with the day-to-day maintenance and repair work routinely performed by personnel from other NYPA facilities. There is a wide array of inspection, monitoring, testing, maintaining and repairing of equipment and structures at each of the facilities, as well as other jobs that ensure regulatory compliance and reliable operations. A sampling of the work includes overhauling gear boxes, scaffolding, battery testing and replacement, wicket gate inspection and repairs, oil analysis, work on pumps, seals and motors, testing, calibrating and maintaining monitoring equipment, flashboard installation and removal, etc. In addition, there are general facility expenses such as trash removal, communications, electricity, snow removal, facility upkeep, and insurance. The level of expenditures for a given year is determined in a budget process with a budget being presented to the Board of Trustees for approval that balances financial and operational requirements.

Most of the expenditures for this work are NYPA labor costs which include travel time to and from the home facility. Materials and supplies are also needed. NYPA employs outside contractors to do specialized work if this proves more cost effective than assigning in-house staff. During 2012, the Small Hydro facilities came in within $100,000 of budget, which is evidence to the appropriateness of the resources being allocated.

In response to the Customer's inquiry regarding the Kensico facility these costs have since been removed from the 2013 Final COS. At the time of the Preliminary COS, it had not been determined that Kensico would be closing. Upon learning of its closure, NYPA removed all costs related to the operation of this facility from the Final COS with the exception of insurance which represents insurance for all of the Small Hydro facilities. Beginning in 2014, these costs will need to be reclassified to another budget line. As mentioned earlier, NYPA has included the cost of decommissioning Kensico amortized over five years through 2017 recognizing that this facility has been closed and is now ready for decommissioning.

Recommendation: Staff recommends that due to the recent closure of Kensico, the operating expenses associated with it be removed from the COS and has reflected this in the 2013 Final COS. Along with this, staff recommends that the current projected costs to decommission Kensico be added to the Final COS, amortized over five years. Given the due diligence that was put into developing the Small Hydro budgets and that these are approved budgets that balance the needs of these facilities with available resources, staff does not recommend any further changes to Small Hydro operating costs in the 2013 Final COS.

Issue 6: Excess Revenues Should Be Returned to the Customers

Comments: The NYCGCs have commented that NYPA has been over collecting on its Fixed Costs each year and needs to return this money to the Customers.

Staff Analysis: Per the terms of the LTA Agreement, there is no "true-up" on the Fixed Cost portion of the COS. Through the SAPA process, Fixed Costs are determined and approved by the Board of Trustees. Once the accompanying rate is determined, except for a modest 5% contingency that, if unused, is returned to Customers, NYPA accepts all risks and must absorb any and all costs that exceed that amount.

Recommendation: Since the terms of the LTA do not allow for a "true-up" of Fixed Costs, NYPA staff finds this claim to be without merit.

2. Final Recommendation on 2013 Fixed Costs

"Based on Customer comments received and further staff analysis, staff recommends the withdrawal of the originally proposed Fixed Costs increase and the approval of a Fixed Costs decrease in 2013 over 2012 rates. The Fixed Costs for 2013 would decline $5.4 million from the 2012 COS to $154.3 million. This is a $9.2 million decline from the costs discussed at the September 24, 2012 Trustee meeting and included in the October 10, 2012 SAPA notice. A breakdown of the changes in 2013 Fixed Costs as compared to 2012 are as follows: Operations and Maintenance, an increase of $1.2 million; Shared Services, an increase of $1.3 million; Capital Costs, a decrease of $6.7 million and Other Expenses, a decrease of $1.2 million. This change will take effect beginning March 1, 2013. When taken into consideration with AEII costs which are outside of the SAPA process and this Notice of Adoption, the total 2013 Fixed Costs component of the production rates are $287.6 million.

3. For Trustee Information: Description of Final 2013 COS and Customer Rates

"Because the Variable Costs component (i.e., fuel and purchased power, risk management, New York Independent System Operator ("NYISO") ancillary services and O&M reserve, less a credit for NYISO revenues from Customer-dedicated generation) is developed in collaboration with the Customers in accordance with the provisions of the LTAs previously approved by the Trustees, staff is not requesting the Trustees' approval of the Variable Costs component of the production rates for 2013. Additionally, the Authority passes all Variable Costs to the Customers by way of the "Energy Charge Adjustment ("ECA") with Hedging" cost recovery mechanism which the Customers collectively selected for 2013. This cost recovery mechanism offered under the LTA employs a monthly charge or credit that reflects the difference between the projected Variable Costs of electricity (i.e., the Variable Costs recovered under the Customers' tariffs) and the monthly actual Variable Costs incurred by the Authority to serve the Customers.

"For the Trustees' information, the projected Variable Costs are expected to decrease 9.5% from 2012 levels and, in combination with the recommended Fixed Costs decrease and AEII costs, results in a final projected 2013 COS of $808.2 million. At existing rates, revenues of $860.7 million would be produced, resulting in an over-recovery of $52.5 million. As a result, staff is recommending that rates be revised downward by 6.1%.

"The current 2012 Customer rates and recommended 2013 Customer rates with the 6.1% overall decrease are shown in Exhibit "7-B."

FISCAL INFOMATION

"The adoption of the Fixed Costs decrease would result in an estimated $5.4 million reduction in revenue to the Authority which is offset by the forecasted reduction in costs. The Energy Charge Adjustment mechanism will protect NYPA's net revenues from the effects of movements in variable costs above those projected.

RECOMMENDATION

"The Director – Market Analysis and Tariff Administration recommends that the Trustees authorize the Corporate Secretary to file a Notice of Adoption with the New York State Department of State for publication in the

New York State Register for a decrease in Fixed Costs applicable to the New York City Governmental Customers under the Long-Term Agreements.

"It is also recommended that the Corporate Secretary be authorized to publish a Notice of Adoption of the Notice of Proposed Rulemaking, consistent with the discussion herein, in the State Register.

"The Trustees are also requested to authorize the Senior Vice President – Economic Development and Energy Efficiency, or his designee, to issue written notice of adoption and the revised tariff leaves, as necessary, to the affected Customers.

"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 President and Chief Executive Officer, was unanimously adopted.

RESOLVED, That the Senior Vice President – Economic Development and Energy Efficiency or his designee be, and hereby is, authorized to issue written notice of this final action by the Trustees to the affected Customers; and be it further

RESOLVED, That the Corporate Secretary of the Authority be, and hereby is, directed to file such notices as may be required with the New York State Department of State for publication in the *New York State Register* and to submit such other notice as may be required by statute or regulation concerning the rate decrease; and be it further

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

8. Informational Item: Key Performance Indicators and Strategic Planning Process

Ms. Janis Archer, Director of Strategy Management and Mr. Robert Lurie, Senior Vice President of Strategic Planning, reported on the Authority's Key Performance indicators and Strategic Planning Process, respectively.

Key Performance Indicators

Ms. Janis Archer presented the following report:

> ***The Authority utilizes the key performance indicators on its balanced scorecard to communicate priorities, guide behavior and monitor achievement in critical areas. Each year, the Authority revisits the measurement structure to ensure continued accuracy and relevance. In 2012, the scorecard consistently showed performance at or surpassing target for most indicators. However, two areas, Safety Leadership and Environmental Responsibility, experienced challenges in 2012. In Safety, two changes were made. First, Recordable Incident Rate was replaced with the DART (Days Away, Restricted or Transferred) Rate. Rather than reporting a metric based on each incident occurrence, however minor, only those incidents that preclude the individual from working at their normal assignment are used in the calculation. This reduction allows focus on the impactful events. The target, which has been set at 0.78, is well below the Bureau of Labor Standards benchmark for utilities of 1.60. This is a stringent target. Under the previous Recordable incident rate indicator, this month's single incident would have resulted in a green status.***
>
> ***The second Safety change is found in one of the Operations Business Unit's level 2 measures -- Near Miss Reports. In 2012, Near Miss Reports merely aggregated observed near misses. If anyone saw and reported a near miss, it counted towards achieving the target. The intention of this leading measure was to avoid incidents by catching near misses. The Operations Business Unit took a closer look at the measure and improved it by including "resolution of the near miss" as part of the measure. Now, only those near misses noted and acted upon will count towards the target.***
>
> ***In prior years, the environmental measure, a lagging or after-the-fact measure, had no supporting leading measures. For 2013, three such leading measures have been introduced: 1) Plant site environmental walk downs, 2) Job specific environmental briefings and 3) Good Management Practices implementation. These measures target preventative steps. The Authority uses the measures to guide behavior – in this case prevention rather than post-incident record keeping.***
>
> ***Since our scorecard of performance indicators is a communication tool, we review it periodically in order to increase clarity and focus. In 2013, two format changes resulted in the addition of: 1) differentiating quantitative and milestone based measures and 2) a trend indicator.***
>
> ***In the redesigned Scorecard, there is a new column at the right, labeled Trend, displaying several new symbols. The trend compares the ratio of the current result and target with the average of the same ratios for the 3 prior months. The difference will indicate whether the measure shows consistent behavior month-to-month or if the behavior is improving or worsening. The***

> ***flat bar indicates a stable or consistent trend. The upward arrow marks an improving trend and the downward arrow a less desirable trend. Trend is independent of status – O&M budget Performance has a green status but a downward trend because, compared to prior months where there were budget underruns, January spending is just about at budget. The status remains green but the trend tells us spending has accelerated. The trend does not signal the reasons for the change nor does it inevitably indicate a problem. It merely points out a possible need to look deeper. The trend is, essentially, the "leading" indicator in our scorecard.***
>
> ***In 2013, we plan an additional change to our scorecard. Beginning with the first quarter, Enterprise Risk will provide a quarterly risk indicator for selected measures, which will move us further from merely taking a backward look with the measures.***
>
> ***Each of the measures displayed here is a quantitative performance indicator, meaning they report a numerically defined result in a goal area.***
>
> ***We also track important project and program progress with regard to key deliverables in our scorecard.***
>
> ***Projects and programs such as the Energy Highway and the Enterprise Wide Risk Management have been reported on the scorecard in previous years, intermixed with the quantified measures and forced into a single "percent complete" notation. These project and program measures will now be displayed in a companion "scorecard" where the progress is represented graphically and the ability to note highlights and issues allows for more meaningful high-level reporting. The last column for the Energy Highway informs us that all 2012 milestones were met and highlights the delivery of the Blueprint. Please note, this scorecard is fabricated from 2012 data. Compliance Training met all its milestones in 2012. Milestone based measures are reported quarterly, so the first appearance of this chart will be with the March first quarter data.***

In response to a question from Chairman Koelmel, President Quiniones said the Authority follows a very structured process identifying its success indicators and the priorities that will define its success. He said last year the Performance Scorecard focused on how the Authority performed historically; however, the addition of the new "Trend" indicator is more predictive and shows the direction of the Authority going forward. In that way, senior management and the Board can focus on important aspects of what is going on in the Authority.

Responding to further questions from Chairman Koelmel, President Quiniones said that the Authority is dealing with a number of issues relating to workforce management including retention and succession planning. The Authority is exploring initiatives such as developing and creating a training center for the utility workforce. Ms. Archer added that the Authority has developed a process to deal with succession planning and is now looking at measures that will impact its succession plans which is indicated in its retention "touch points."

Mr. Russak added that there are two measures in the financial area, the O&M budget that is controlled and managed by the Authority and the debt service coverage which is susceptible to the pressures of the marketplace. These indicators, however, will assist the Authority in managing its business. With regards to how Net Income is reported, it is believed that although the Authority needs to have the financial strength for its major capital and energy efficiency programs, going forward the Authtority need ready access to capital markets in order to achieve its mission to deliver low-cost power services to its customers; this is indicated in the debt service measure.

Responding to a question from Trustee LeChase, Ms. Archer said that all of the reportable incidents will be recorded, tracked and addressed and that the goal is to address at least 85 percent near-misses within 90 days. Mr. Welz added that from lessons learned, the Authority will hold itself accountable to deal with the issues and also communicate any action to staff.

Strategic Planning Process

Mr. Robert Lurie presented highlights of the 2013 Strategic Planning Process as follows:

> ***The 2013 strategic planning process calls for a broad external scan utilizing stakeholders, subject matter experts and research materials. The scan and subsequent off-site strategy meetings will be guided by a series of scenarios intended to facilitate and focus discussion around the energy industry of the future and NYPA's optimal role therein.***
>
> ***The collective external scan information as well as internal scan information gathered from NYPA executives and staff becomes input for the off-site sessions, the first of which will address NYPA's Mission, Vision and Values. The second off-site session will use the strategic direction established at the first session along with a SWOT (Strengths, Weaknesses, Opportunities, Threats) analysis to identify specific, measurable goals and targets. These targets will clearly define the criteria for success.***
>
> ***The third off-site session will identify the strategies, i.e., the specific initiatives that will define the path for achieving the identified goals. Each strategy/initiative will be assigned a sponsor and lead who will develop a time-bound action plan to achieve the stated objective. Appropriate performance measures will be identified to evaluate the success of the initiative.***
>
> ***Trustee input will be sought throughout the process.***

Responding to a question from Chairman Koelmel, President Quiniones said the Authority will conduct an annual strategic planning program, the goal of which is to form the annual business plan and budget. On its completion, the Trustees will be asked to review and approve the Strategic Plan. He continued that the utility business model is in the process of changing; therefore, investments by utilities, including the Authority, over the

next ten years will most likely define what utilities will look like over the next 30-40 years. The next ten years is a critical time for the Authority, hence, the investments that are made by the Authority over the next ten years will define what it will look like over the next 30-40 years, the goal of the strategic planning process.

Responding to a question from Trustee LeChase, Mr. Lurie said the Authority will need to be flexible with the timeframe in developing its strategic plan and President Quiniones said the Board will be involved in the process as the Authority develops its plan on where it should be in the next ten years.

9. <u>Motion to Conduct an Executive Session</u>

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. Upon 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. Upon motion made and seconded, the meeting resumed in Open Session.

11. <u>Next Meeting</u>

The Annual Meeting of the Trustees will be held on **March 21, 2013, at 11:00 a.m., at the Clarence D. Rappleyea Building in 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 1:00 p.m.

Karen Delince
Corporate Secretary

EXHIBITS

For

February 26, 2013

Regular
Trustees' Meeting

POWER AUTHORITY

OF THE

STATE OF NEW YORK

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

AGREEMENT FOR THE SALE

OF EXPANSION AND/OR REPLACEMENT POWER AND ENERGY

TO [EXISTING EP/RP RECIPIENT]

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 V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion and/or Replacement Power and Energy (“Agreement”) with _______ (“Customer”), with offices facilities at ____, New York ____. The Authority and the Customer are from time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

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

WHEREAS, EP consists of 250 megawatts (“MW”), and RP consists of 445 MW, of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

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

WHEREAS, the Authority’s Board of Trustees (“Trustees”) have previously authorized the Customer’s Allocation of EP and/or RP, which is scheduled to expire after June 30, 2013 on the “Expiration Date” specified in Schedule A to this Agreement;

WHEREAS, the Authority and the Customer are currently parties to an agreement with the Customer’s local electric utility (“Local Utility”) governing the sale of the Allocation to the Local Utility for resale to the Customer at its Facility, and such agreement is scheduled to expire on June 30, 2013 (the “Expiring Agreement”);

WHEREAS, the provision of Electric Service associated with the Allocation is an unbundled service separate from the transmission and delivery of power and energy to the Customer, and delivery service will be performed by the Customer’s Local Utility;

WHEREAS, such transmission and delivery service will be made in accordance with the applicable tariffs of the Local Utility;

WHEREAS, the Parties have reached an agreement on a contract governing the direct sale of the Allocation to the Customer for remaining term of the Customer's Allocation, on the terms and conditions set forth in this Agreement.

WHEREAS, the Parties intend that this Agreement will govern the terms and conditions of the sale of the Allocation to the Customer for the remaining term of the Allocation;

WHEREAS, the Authority has complied with requirements of PAL § 1009, which specifies the approval process for certain 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:

I. Definitions

A. **Agreement** means this Agreement.

B. **Allocation** refers to the allocation of EP and/or RP awarded to the Customer for a certain term as specified in Schedule A.

C. **Contract Demand** is as defined in ST WNY-1.

D. **Electric Service** is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, ST WNY-1 and the Rules.

E. **Expansion Power** (or **EP**) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005 (13).

F. **Expiring Agreement** has the meaning set forth in the recitals.

G. **Facility** means the Customer's place of business identified in Schedule A.

H. **Firm Power** is as defined in ST WNY-1.

I. **Firm Energy** is as defined in ST WNY-1.

J. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).

K. **FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project's original license which became effective in 1957.

L. **Hydro Projects** is a collective reference to the Project (defined below) and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.

M. **Load Serving Entity** (or **LSE**) means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.

N. **Local Utility** has the meaning set forth in the recitals.

O. **NYISO** means the New York Independent System Operator, Inc. or any successor organization.

P. **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.

Q. **Project** means the Niagara Power Project, FERC Project No. 2216.

R. **Replacement Power** (or **RP**) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(13).

S. **Rules** are the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.

T. **Service Tariff No. WNY-1** (or **ST WNY-1**) means the Authority's Service Tariff No. WNY-1, as may be modified from time to time by the Authority. ST WNY-1 shall be applicable to Electric Service provided to the Customer on and after July 1, 2013.

U. **Schedule A** refers to the Schedule A entitled "Expansion Power and/or Replacement Power Allocations" which is attached to and made part of this Agreement.

V. **Schedule B** refers to the Schedule B entitled "Expansion Power and/or Replacement Power Customer Commitments" which is attached to and made part of this Agreement.

W. **Substitute Energy** means energy sold to the Customer at its request which the Authority procures from markets administered by the NYISO to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement.

X. **Taxes** is as defined in ST WNY-1.

Y. **Unforced Capacity** (or **UCAP**) means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures

II. Electric Service

A. Subject to the other provisions of this Agreement, commencing July 1, 2013, the Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, ST WNY-1 and the Rules.

B. The Authority shall provide UCAP in amounts necessary to meet the Customer's NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs.

C. The Contract Demand for the Customer's Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a *pro rata* basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.

D. The Contract Demand may not exceed the Allocation.

III. Rates, Terms and Conditions

A. Subject to the other provisions of this Agreement, commencing July 1, 2013, Electric Service shall be sold to the Customer based on the rates, terms and conditions determined in accordance with this Agreement, ST WNY-1 and the Rules.

B. The Customer may not resell or permit any other person to use any quantity of the EP or RP it has purchased from the Authority under this Agreement.

C. Electric Service sold to the Customer pursuant to this Agreement may only be used by the Customer at the Facility.

D. Notwithstanding any other provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by the Authority at any time upon 30 days prior written notice to the Customer if, after consideration by the Authority of its legal obligations, the marketability of the output or use of the 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 charges 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 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.

IV. Expansion Power and/or Replacement Power Customer Commitments

Schedule B sets forth the Customer's specific "Expansion and/or Replacement Power Customer Commitments." The commitments agreed to in Schedule B are in addition to the other rights and obligations of the Parties provided for in the Agreement, ST WNY-1 and the Rules.

V. Rules and ST WNY-1

ST WNY-1, as may be modified or superseded from time to time by the Authority in its discretion, 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 ST WNY-1 and the Rules, the provisions of ST WNY-1 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and ST WNY-1, the provisions of this Agreement shall govern.

VI. Transmission and Delivery of Firm Power and Firm Energy; Related Issues

A. The Customer shall pay the Local Utility for transmission and delivery service associated with the Allocation in accordance with all applicable tariffs, rulemakings, and orders, in order to deliver to the Customer the Allocation of Firm Power and Firm Energy supplied by the Authority under this Agreement. To the extent the Authority incurs transmission and delivery service charges or other costs associated with the Allocation during the term of this Agreement, the Customer agrees to compensate the Authority for all such charges and costs incurred.

B. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff or other applicable tariff ("NYISO Charges"), as set forth in ST WNY-1 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.

C. By entering into this Agreement, the Customer consents to the exchange of information between the Authority and the Local Utility pertaining to the Customer that the Authority and the local Utility determine is necessary to provide for the Allocation, sale and delivery of EP or RP to the Customer, the proper and efficient implementation of the EP and RP programs, billing related to EP or RP, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters.

D. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement or other form of understanding between the Authority and the Local Utility on terms and conditions that are acceptable to the Authority.

E. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, provide documentation, execute consents and provide other information (collectively, "Information") the Authority determines is necessary for the provision of Electric Service, the delivery of EP and/or RP, billing related to the EP or RP program, the effective and proper administration of the EP or RP program, and/or the performance of contracts or other arrangements between the Authority and the Local Utility. The Customer's failure to provide such Information shall be grounds for the Authority in its sole discretion to withhold or suspend Electric Service to the Customer.

VII. Billing and 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 Utility's service tariffs and any agreement between the Authority and the Local Utility. An alternative basis for billing may be used provided the Parties agree in writing and the Local Utility provides its consent if such consent is deemed necessary.

B. The Authority will render bills by the 10th business day of the month for charges due for the previous month. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and other applicable charges.

C. The Authority may render bills to the Customer electronically.

D. The Authority and the Customer may agree in writing to an alternative method for the rendering of bills and for the payment of bills, including but not limited to the use of an Authority-established customer self-service web portal.

E. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.

F. Unless otherwise agreed to by the Authority and the Customer in writing, if the Customer fails to pay any bill when due, an interest charge of two percent (2%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent (1 1/2%) of the sum unpaid shall be added on the first day of each succeeding billing period until the amount due, including interest, is paid in full.

G. Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.

H. If at any time after commencement of Electric Service the Customer fails to make complete and timely payment of any two (2) bills for Electric Service, the Authority shall have the right to require the Customer to deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit shall be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. If the Customer fails or refuses to provide the deposit within thirty (30) days of a request for such deposit, the Authority may, in its sole discretion, suspend Electric Service to the Customer or terminate this Agreement.

I. All other provisions with respect to billing are set forth in ST WNY-1 or the Rules.

J. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

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 ST WNY-1 as applicable.

B. The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VIII.A of this Agreement that could impact Customer's Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.

C. For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority's Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.

D. The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days' prior written notice.

IX. Effectiveness, Term and Termination

A. This Agreement shall become effective and legally binding on the Parties upon execution of this Agreement by the Authority and the Customer.

B. Once initiated, Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, ST WNY-1, or the Rules; (3) expiration of the Allocation by its own terms as specified in Schedule A.

C. 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 ST WNY-1.

D. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, ST WNY-1, or the Rules.

X. Additional Allocations

A. Upon proper application by the Customer, the Authority may in its discretion award additional allocations of EP or RP to the Customer at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (i) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (ii) produce a modified Appendix A to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix A, within a reasonable time after commencement of Electric Service for any such additional allocation.

B. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the Authority to evaluate any requests for additional allocations and consider the terms and conditions that should be applicable of any additional allocations.

XI. Notification

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

To the Authority:

New York Power Authority
Attention: Manager – Business Power Allocations and Compliance
123 Main Street
White Plains, New York 10601
MED-BPAC@nypa.gov
(914) 390-8156

To the Customer:

[NAME]
Attention: **[NAME]**
[ADDRESS]
[EMAIL]
[FAX NUMBER]

The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XI.B of this Agreement.

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.

XII. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 U.S.C. §§ 836, 836a).

XIII. 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.

XIV. Assignments and Transfers

The Customer may not assign or otherwise transfer an interest in this Agreement without written approval of the Authority.

XV. Previous Agreements and Communications

A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, commitments, offers, contracts and writings, written or oral, with respect to the subject matter hereof.

B. Except as otherwise provided in this Agreement, no modification of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XVI. Severability and Voidability

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

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

XVII. 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.

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:

[CUSTOMER NAME]

By: ____

Title: ____

Date: ____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: ____

Title: ____

Date: ____

SCHEDULE A

EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer:

Type of Allocation (EP/RP)	Allocation Amount (kW)	Facility	Trustee Approval Date	Expiration Date

SCHEDULE B

EXPANSION POWER AND/OR REPLACEMENT POWER CUSTOMER COMMITMENTS

[COMMITMENTS TO BE DESCRIBED IN FINAL CONTRACT]

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

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

Service Tariff No. WNY-1

Table of Contents

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

Schedule of Rates for Firm Power Service

I. Applicability

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

II. Abbreviations and Terms

A. The following abbreviations are used:

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

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

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

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

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

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

G. The term “Expansion Power and/or Replacement Power” means Firm Power and Firm Energy made available under this Service Tariff by the Authority from the Project for sale to the Customer for business purposes pursuant to PAL § 1005(5) and (13).

H. The term “Firm Power” means capacity (kW) that is intended to be always available from the Project subject to the curtailment provisions set forth in the Agreement between the Authority and the Customer and this Service Tariff. Firm Power shall not include peaking power.

I. The term “Firm Energy” means energy (kWh) associated with Firm Power.

J. The term “Load Serving Entity” or “LSE” shall have the meaning set forth in the Agreement.

K. The term “Project” means the Authority’s Niagara Power Project, FERC Project No. 2216.

L. The term “Rate Year” or “RY” means the period from July 1 through June 30 starting July 1, 2013, and for any year thereafter.

M. The term “Rules” means the Authority’s rules and regulations set forth in 21 NYCRR § 450 *et seq*., as they may be amended from time to time.

N. The term “Service Tariff” means this Service Tariff No. WNY-1.

O. The term “Target Rate” shall have the meaning set forth in Section III herein.

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

III. Monthly Rates and Charges

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

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

1. The initial rate point will be established by the EP/RP rates ($/kW and $/MWh), determined by mid-April 2012 and made effective on May 1, 2012 in accordance with the Authority's then-applicable EP and RP tariffs. The Target Rate (*i.e.* demand and energy rates) for RY 2013 shall be $7.99/kW and $13.66/MWh.

2. The difference between the two rate points is calculated and divided by 3 to correspond with the number of Rate Years over which the phase-in will occur. The resulting quotients (in $/kW and $/MWh) are referred to as the "annual increment."

3. The annual increment will be applied to the base rates for the 3-year period of the 2013, 2014 and 2015 Rate Years, which shall be as follows:

   RY 2013: July 1, 2013 to June 30, 2014
   RY 2014: July 1, 2014 to June 30, 2015
   RY 2015: July 1, 2015 to June 30, 2016

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

4. Effective commencing in RY 2013, the Annual Adjustment Factor ("AAF") described in Section V herein, shall be applied as follows:

   A. For the RY 2013 only, the AAF will be suspended, and the RY 2013 rate increase will be subject only to the annual increment.

   B. For the RYs 2014 and 2015, the AAF will be applied to the demand and energy rates after the addition of the annual increment to the rates of the previous RY rates. Such AAF will be subject to the terms and limits stated in Section V herein.

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

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

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

C. <u>Monthly Base Rates Exclude Delivery Service Charges</u>

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

D. <u>Minimum Monthly Charge</u>

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. <u>Billing Period</u>

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. <u>Billing Demand</u>

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

G. Billing Energy

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

H. Contract Demand

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

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IV. **General Provisions**

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any billing period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.

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

C. Delivery

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

D. Adjustment of Rates

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

E. Billing Methodology and Billing

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

1. The billing methodology to be used to render bills to the Customer related to its Allocation shall be determined in accordance with the Agreement and delivery agreement between the Authority and, as applicable, the Customer or local electric utility or both.

2. Billing Demand – Unless separately metered, the billing demand charged by the Authority to each Customer will be the highest 15-minute integrated demand during each billing period recorded on the Customer's meter multiplied by a percentage based on load factor sharing, as applicable.

3. Billing Energy – Unless separately metered, the kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer's meter for the billing period multiplied by a percentage based on load factor sharing, as applicable.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

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

   a. The demand charge per kilowatt for Firm Power specified in this Service Tariff or any modification thereof applied to the Customer's billing demand (as defined in Section IV.E, above) for the billing period; and

   b. The energy charge per MWh for Firm Energy specified in this Service Tariff or any modification thereof applied to the Customer's billing energy (as defined in Section IV.E, above) for the billing period; and

   c. A charge representing reimbursement to the Authority for all applicable Taxes incurred by the Authority as a result of providing Expansion Power and/or Replacement Power allocated to the Customer.

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

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

I. Customer Resales Prohibited

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

V. Annual Adjustment Factor

A. Adjustment of Rates

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

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

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

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

2. Annual Adjustment Factor Computation Guide

   Step 1: For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.

   Step 2: Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the AAF.

   Step 3: Commencing RY 2014, modifications to the AAF will be subject to ±5% Collar, as described below.

   a) When the AAF falls outside the ±5% Collar, the Excess will be carried over to the subsequent RY. If the AAF in the subsequent RY is within the ±5% Collar, the current RY Excess will be added to/subtracted from the subsequent Rate Year's AAF, up to the ±5% Collar.
   b) Excesses will continue to accrue without limit and carry over such that they will be added to/subtracted from the AAF in any year where the AAF is within the ±5% Collar.

   Step 4: Multiply the current Rate Year base rate by the AAF calculated in Step 2 to determine the new Rate Year base rate.

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

3. The Authority shall provide the Customer with notice of any adjustment to the current base rate per the above and with all data and calculations necessary to compute such adjustment by June 15th of each year to be effective on July 1 of such year, commencing in 2014. The values of the latest officially published (electronically or otherwise) versions of the indices and data provided by the BLS and EIA as of June 1 shall be used notwithstanding any subsequent revisions to the indices.

4. If during the term of the Agreement any of the three above indices ceases to be available or ceases to be reflective of the relevant factors or of changes which the indices were intended by the Parties to reflect, the Customer and the Authority shall mutually select a substitute Index. The Parties agree to mutually select substitute indices within 90 days, once notified by the other party that the indices are no longer available or no longer reflect the relevant factors or changes with the indices were intended by the Parties to reflect. Should the 90-day period cover a planned July 1 rate change, the current base rates will remain in effect until substitute indices are selected and the adjusted rates based on the

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 (2013)	Measuring Year - 1 (2012)
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

State	Revenues ($000s)	Sales (MWh)	Avg. Rate (cents/kWh)
Measuring Year (2012)			
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	155,903	2,173,679	
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	152,785	2,130,205	
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 (2013)	Measuring Year -1 (2012)
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

Index	Ratio of MY to MY-1	Weight	Weighted Factors
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	0.255
AAF			**1.016**

STEP 3

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

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

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

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

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

New York Power Authority
Expansion and Replacement Power Allocations
Notice of Public Hearing for Direct-Service Contracts

Exhibit "3c-B"
February 26, 2013

Number	Company Name	Program	City	County	Trustee Approval Date	Allocation (kW)	New Job Creation	Total Job Commitment	Project Capital Investment	Approved Allocation Term	Allocation Start Date (1)	Proposed Direct Sale Contract Start Date	Proposed Direct Sale Contract Expiration Date
B-1	Buffalo Shredding and Recovery, LLC	EP	Buffalo	Erie	6/28/2011	1,200	22	22	$12,500,000	5 Years	3/1/2012	7/1/2013	2/28/2017
B-2	Citigroup Technology, Inc.	RP	Amherst	Erie	1/30/2007	1,100	500	500	$8,000,000	5 Years	10/1/2008	7/1/2013	9/30/2013
B-3	Galvstar LLC	RP	Buffalo	Erie	4/29/2008	2,000	50	50	$30,000,000	5 Years	11/1/2011	7/1/2013	9/30/2016
B-4	Klein Steel Service Inc.	RP	Tonawanda	Erie	6/29/2010	2,000	37	84	$8,200,000	5 Years	12/1/2011	7/1/2013	11/30/2016
B-5	MOD-PAC Corporation	EP	Buffalo	Erie	12/15/2011	400	45	405	$6,000,000	7 Years	11/1/2012	7/1/2013	10/31/2019
B-6	Niagara Coatings Services, Inc.	RP	Niagara Falls	Niagara	4/4/2011	200	3	17	$300,000	5 Years	12/1/2011	7/1/2013	11/30/2016
	Totals					**6,900**	**657**	**1,078**	**$65,000,000**				

(1) Each of the allocations commenced service under sale-for-resale agreements that expire on June 30, 2013


New York Power Authority
Generating more than electricity

President & Chief Executive Officer Report

Gil Quiniones

March 21, 2013

Board of Trustees Meeting

New York Power Authority

Balanced scorecard for February 2013

Goal	Measure	YTD Target	YTD Actual	Status	Trend
Maintain Infrastructure	Generation Market Readiness *(%)*	99.4	**99.2**	■	—
	Transmission System Reliability *(%)*	94.95	**97.35**	▲	—
Financial Management	O&M Budget Performance *($ Millions)*	58	**58.5**	▲	↘
	Debt Coverage Ratio *(Ratio)*	2.4	Quarterly measure		
Energy Services	MMBTU's Saved	20.9	**27.7**	▲	↗
	Energy Efficiency Investment In State Facilities *($ Millions)*	7.3	**13**	▲	↗
Workforce Management	Retention *(# of Touchpoints)*	135	Quarterly measure		
Safety Leadership	DART Rate *(Index)*	0.78	**0.41**	▲	↗
Environmental Responsibility	Environmental Incidents *(Units)*	6	**2**	▲	↗

Note: Milestone-based measures will be reported quarterly

Status	**Trend**
▲ Meeting or exceeding target	↗ Improving
■ Below target	— Stable
● Significantly below target	↘ Worsening

Highlights

- Build Smart NY

- Charge NY

Build Smart NY

- Last December, Governor Andrew M. Cuomo issued Executive Order 88
- BuildSmartNY will implement this Executive Order
- Direct state agencies to increase Energy Efficiency by 20% in 7 years
- Taxpayer will save million of dollars
- Will support the NY works Program
- NYPA hired new Director for Initiative

Charge NY

- Governor Cuomo presented ambitious plan to promote plug-in electric vehicle during State of the State 2013
- Invest in electric car network
- Will reduce reliance on fossil fuels
- Target is 3,000 charging stations
- This Program will further New York’s leadership in clean energy
- Will Consist of four main areas:
  - Deployment of Electric Vehicle Service Equipment (EVSE)
  - Advanced technology demonstrations
  - Regulatory reform
  - Public education
- Total budget is $50 million over 5 years

New York Power Authority

New York Power Authority

Generating more than electricity

123 Main Street
White Plains, NY 10601-3170

914.681.6675
Edward.Welz@nypa.gov

New York Power Authority

Edward Welz
Chief Operating Officer

TO: NYPA BOARD OF TRUSTEES

FROM: EDWARD WELZ, CHIEF OPERATING OFFICER

DATE: FEBRUARY 12, 2013

SUBJECT: MONTHLY REPORT FOR THE BOARD OF TRUSTEES

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This report covers performance of the Operations group in January 2013.

Operations

Plant Performance

Systemwide net generation[1] was 2,016,214 megawatt-hours[2] (MWh) for January 2013 (and for year-to-date), which is above the projected net generation of 2,007,781 MWh.

The fleet availability factor[3] was 87.3 percent in January 2013. Generation market readiness factor[4] was 99.7* percent in January, which is above the monthly target of 99.4 percent. Year-to-date generation market readiness factor was also at 98.9 percent.

Three significant outages occurred during January, while one significant outage that began last year continued into the month:

a) Astoria 500MW had three major outages:

   1. Unit 7A failed to make start-up schedule and remained out of service for 24 hours. This resulted in loss of revenue of $1,143,448.
   2. The following week, Unit 7A went out of service due to emission issues. The unit returned to service on February 3, 2013. The length of the outage was 166 hours with a revenue loss of $69,370.
   3. Unit 7S was forced out of service due to loss of vacuum. The unit returned to service on February 3, 2013. The length of the outage was 179 hours with no loss of revenue.

b) The weld crack repairs on St. Lawrence Unit 28 continued into the month. The unit is expected to return to service on March 15, 2013.

Generation net revenue in January (and for the year) was $37.3 million with loss of revenue of $1.2 million during the month.

Niagara River flows in January 2013 continued to be below the historical average, and are expected to be below average for at least the next two years. St. Lawrence River flows during January 2013 were also below forecast. River flows are expected to be below historical levels beyond 2013.

Transmission Performance

Transmission reliability[i] in January was 96.81 percent, which was above the target of 95.17 percent. Year-to-date transmission reliability is 96.81 percent, above the target of 95.17 percent.

There were no significant unplanned transmission events to report in January.

Safety

The NYPA Dart Rate for January 2013, and year-to-date, is 0.83 compared to the target of 0.78. The Operations Dart Rate for January 2013 is 1.28 compared to the target of 1.08.

One lost time injury occurred in January at Niagara when a maintenance mechanic suffered a concussion when he fell backwards and hit his head on the ground.

Environmental

There were two reportable incidents for January 2013 and for the year:

1) At Gilboa, approximately 20 lbs. of R-22 refrigerant was found absent from the S&R building AC unit.
2) At St. Lawrence, a SPDES excursion runoff exceeded the Total Suspended Solid (TSS) at outfall 018. This was attributed to sand and salt runoff.

The annual target is 32 incidents.

Relicensing – Niagara Power Project

Work at the Schoellkopf Overlook has been halted. Construction associated with the Maid of the Mist proposal will require disturbing significant areas at the Overlook. To minimize the amount of reinstallation and restoration required at the end of those activities, the Relicensing refurbishment efforts have been suspended, awaiting resolution of the Maid of the Mist proposal.

Construction work at the Habitat Improvement Projects (HIP) has been suspended for the winter. During the winter months, we expect to receive the remaining permits (primarily Corps of Engineers) needed to commence construction on Frog Island next season. The Corps has indicated that they intend to permit this HIP under their Nationwide permit program which should expedite the process. Design work on the Strawberry Island HIP, which is the last of the Niagara HIPs, continues.

Relicensing – St. Lawrence-FDR Power Project

Construction of the Nichols Island Controlled Level Pond HIP continues although progress is day-to-day as winter has set in. The access road through the project is now complete. The rehabilitation of Dike A (eastern most) is nearly complete. Dike construction will now proceed moving the west. Dike B construction will be next.

Office of Parks, Recreation and Historic Preservation (OPRHP) continues construction of the new Coles Creek Marina Building. Foundations and steel frame erection are complete. Work continues day-to-day due to winter conditions.

Relicensing – Blenheim-Gilboa Project

Preparation of the preliminary licensing documents continues. A Strategy White Paper is being prepared to support executive decision making. At this time, no significant regulatory issues that would impact relicensing have been identified.

Life Extension and Modernization Programs

St. Lawrence LEM Upgrade

Unit 17 was taken out of service on January 2, 2013 to start unit automation work. To-date, all required asbestos abatement activities have been completed and cable pulling started. The unit is projected to return to service on June 28, 2013. The 2013 scheduled completion date for the LEM Program remains unchanged.

Transmission LEM

Project teams continue coordinating activities to support engineering, procurement, and construction actitivities associated with the St. Lawrence Circuit Breaker and Relay Replacement as well as the Niagara Relay Replacement projects approved under the program. Relay replacements are on-going at Blenheim-Gilboa and Clark Energy Center.

Replacement of the spare auto-transformer at Massena Substation is in progress with equipment delivery expected in mid-2013. A kick-off meeting was conducted with SMIT for fabrication and delivery of the remaining (6) auto-transformers at Massena Substation..

Refurbishment of Auto-Transformer 1B at Marcy is ongoing with completion expected in May 2013. Proposals have been received and are being evaluated for refurbishment of the remaining auto-transformers and reactors at Marcy as well as Massena Substation.

A Request for Proposal (RFQ) has been issued for tower modeling of the weathering steel structures. A RFQ is being compiled for painting of the transmission structures in the St. Lawrence region.

LPGP LEM

The fourth (and final) feeder outage (Feeder 1) to replace the fourth GSU, and potheads at the Switchyard and LPGP in addition to upgrading of the Isolated Phase Bus sections, is scheduled to commence February 11, 2013. The new Unit Control Board for the first unit to be upgraded (#11) was inspected and the factory acceptance testing commenced in January and the delivery has been moved to March. The first new turbine is scheduled to arrive at LPGP in April 2013. The fabrication of the second and third turbine components are well underway and the fourth turbine was released for fabrication. The first unit outage commenced and the disassembly was completed on January 12, 2013 as scheduled. The stay ring was cleaned and inspected and repairs are required similar to the St. Lawrence stay ring; this work is being expedited in order to maintain schedule. The LPGP LEM program is scheduled to be completed in 2020.

RMNPP Unit 13 Standardization

The outage for the standardization work commenced on September 14th, 2012. The measurements of the stator sole plates and the surrounding stator concrete floor revealed that a ½ inch of concrete needs to be removed around half of the underlying stator floor circumference. The concrete removal work will not impact the schedule. Voith continued with the assembly of the new stator in the Assembly Bay which is scheduled to be completed by May 2013 in time for installation into Unit 13.

Technical Compliance – NERC Reliability Standards

In January, Technical Compliance continued to oversee compliance enforcement actions related to several of the NERC Reliability Standards that are applicable to NYPA's NERC registrations. There are currently active enforcement actions for six (6) self reports of possible violations of the standards. One of these was submitted to the Northeast Power Coordicnation Council (NPPC) in 2011, one in 2012 and four (4) in Janaury 2013. For those submitted in 2011 and 2012, NYPA is awaiting the initiation by NPCC of settlement discussions For those submitted in January 2013, mitigation plan documents are under development that will be submitted to NPCC as part of the enforcement process.

The self reports of possible violations submitted to NPCC in January were the result of investigations of compliance concerns identified by the staff pursuant to an internal procedure entitled "Possible NERC Reliability Standards Compliance

Violation." The compliance concerns were associated with the Voltage and Reactive (VAR), Critical Information Protection (CIP), and Protection and Control (PRC) reliability standards. Investigations of two possible compliance violation concerns related to the Modeling, Data, and Analysis (MOD) reliability standards continued in January. This internal process is viewed by the regulator as evidence that NYPA has a strong internal compliance program.

The Federal Energy Regulatory Commission (FERC) approved the new Bulk Electric System (BES) definition on December 20, 2012 that will require transmission assets above 100 kV to be subject to the NERC Reliability Standards. In January, NYPA staff continued work to identify any compliance gaps for 40 newly identified BES elements under NYPA's current NERC registrations. NYPA staff also continued to engage the NYISO and the other NY Transmission Owners to assess both Transmission Operator (TOP) and Transmission Planning (TP) functional registration and compliance management impacts and actions pursuant to the new BES definition.

In January, NYPA continued to implement its work plan for responding to a 2010 NERC Alert Recommendation that requires NYPA to review its current facility ratings methodology for their solely and jointly owned transmission lines to verify that the methodology used to determine facility ratings is based on actual field conditions. The assessment revealed that there are about 260 line clearance discrepancies in NYPA's 1,400 miles of transmission lines. Staff engaged contractors and other utilities to remediate the discrepancies on the high priority lines. Currently, there is one outstanding high priority discrepancy pending resolution by National Grid. The remediation of discrepancies on the medium priority lines is being planned for completion in 2013. Design packages are being finalized by Quanta Technology / Realtime Utility Engineers and CT Male for mitigating the discrepancies on the medium and low priority transmission lines.

Energy Resource Management

NYISO Markets

In January, Energy Resource Management (ERM) bid 2.2 million MWh of NYPA generation into the NYISO markets, netting almost $60.2 million in power supplier payments to the Authority. Year-to-date net power supplier payments are $60.2 million after the first month of 2013.

Fuel Planning & Operations

In January, NYPA's Fuels Group transacted $39.7 million in natural gas and oil purchases, compared with $27.0 million in January 2012. The total $12.7 million increase is mainly due to the higher cost of fuel at the Astoria Energy II Plant ($11.3 million), Small Clean Power Plants ($3.4 million) and the Richard M. Flynn Power Plant ($1.1 million), which was offset by the outage at the 500-MW Combined Cycle Plant (-$3.3 million).

Fuel oil was purchased for AEII ($2.6m) and Flynn ($985k) respectively for the purpose of replenishing inventory level in preparation for winter operations and to meet contractual obligations. In anticipation of compliance with *NYS DEC regulation 225-1, Fuel Composition and Use-Sulfur Limitations* the fuels group sold 28,000Bbls of 2,000ppm sulfur oil to Northville Industries in an effort to deplete one oil storage tank with the intent to refill with compliant oil (15ppm sulfur).

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 l00-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] **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 CO_2 emissions from the power sector, and will require a 10 percent reduction in these emissions by 2018. RGGI is composed of individual CO_2 Budget Trading Programs in each of the nine participating states. Regulated power plants can use a CO_2 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 CO_2 emissions reduction program in the United States. New Jersey was a tenth state within the RGGI program but New Jersey's governor pulled the state out of the program in 2011.

- * Generation Market Readiness result does not include STL Unit 28 which is under review.

Chief Financial Officer – Summary Report

For the month ended January 31, 2013

New York Power Authority

Executive Summary

Net Income

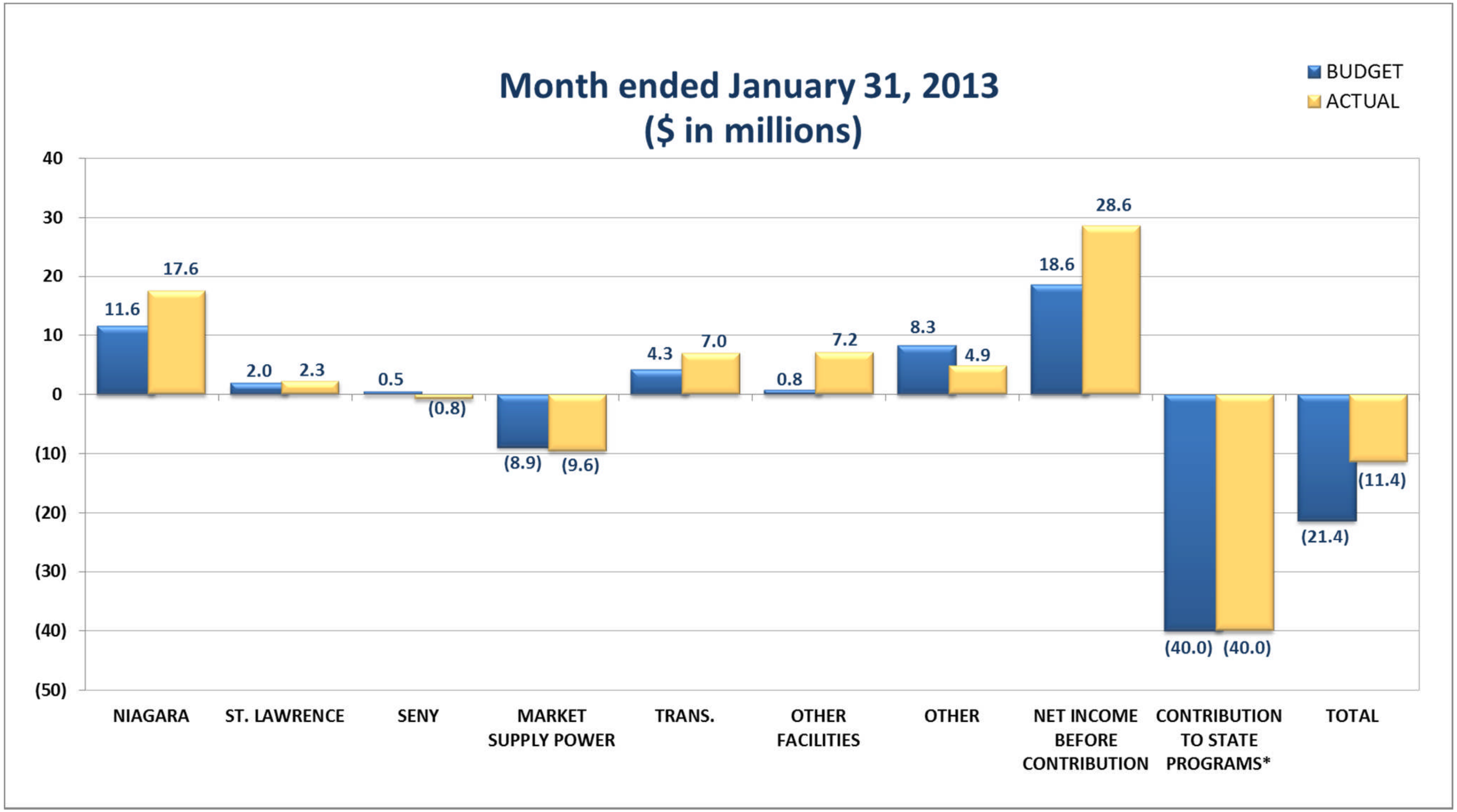
- Net income for January, prior to the recognition of the State contribution, was a positive $28.6 million, which was $10.0 million better than the budget. With the inclusion of the budgeted $40 million contribution, the Authority had a net loss of $11.4 million for the month of January compared to a budgeted net loss of $21.4 million. Results for the month were better than budgeted due primarily to a higher net margin on sales ($13.4 million) partially offset by lower non-operating income ($3.6 million).

- Margins on market-based sales were higher than budgeted primarily due to higher capacity and energy revenues resulting from higher prices. Positive variances were significant at Niagara, Blenheim-Gilboa and the SCPP's.
  - Capacity prices increased significantly in January due to the closing of Dynergy's coal facility, Danskammer, removing approximately 500 MWs of capacity from the market.
  - Production was slightly lower than anticipated reflecting higher net generation at St. Lawrence and Niagara, offset by lower production at the fossil facilities.

- Operations and Maintenance expenses were on target for the month.

- Non-operating income included a mark-to-market loss on the Authority's investment portfolio ($3.1 million) due to higher than budgeted market interest rates.

Net Income



** As authorized by the Trustees in December 2012, in lieu of the voluntary contribution to the NYS general fund a contribution was made to Empire State Development Corp. in support of the Open for Business economic development initiative.*

Decrease in Westchester County Governmental Customer Rates – Notice of Adoption

Exhibit "A"

Current 2012 and Proposed 2013
Customer Production Rates

WESTCHESTER GOVERNMENTAL CUSTOMERS

EXHIBIT "A"

	Demand ($/kW)		ENERGY (¢/kWh)											
			SUMMER		SUMMER ON PEAK		SUMMER OFF PEAK		WINTER		WINTER ON PEAK		WINTER OFF PEAK	
Service Classification	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013
SC 62 Conventional	$0.00	$0.00	6.240	5.531					5.697	5.052				
SC 66 Conventional	$0.00	$0.00	5.604	4.701					5.604	4.701				
SC 68 Conventional	$1.99	$2.14	6.083	5.946					5.541	5.466				
SC 69 Conventional	$1.52	$1.69	6.195	5.993					5.653	5.514				
SC 69 TOD	$2.13	$2.32			7.231	6.813	4.630	4.755			6.292	5.751	4.773	4.734

Service Tariff No. 200 Demand Standby Rate Comparison (Current vs. Proposed)

	CONTRACT DEMAND ($/KW per month)				AS USED DEMAND ($/KW per day)			
	Low Tension		High Tension		Low Tension		High Tension	
Service Class	2012	2013	2012	2013	2012	2013	2012	2013
SC69 TOD	$0.170	$0.186	$0.163	$0.178	$0.064	$0.070	$0.062	$0.067

Service Tariff No. 200 Energy Credit Standby Rate Comparison (Current vs. Proposed)

	ENERGY CREDIT (¢/kWh)							
	SUMMER ON PEAK		SUMMER OFF PEAK		WINTER ON PEAK		WINTER OFF PEAK	
Tension	2012	2013	2012	2013	2012	2013	2012	2013
High Tension	5.958	5.569	4.014	3.562	5.725	5.134	4.381	3.978
Low Tension	5.708	5.336	3.846	3.413	5.486	4.919	4.198	3.812

Decrease in New York City Governmental Customer Fixed Cost Component – Notice of Adoption

Exhibit "A"
Customer Comments

COUCH WHITE
COUNSELORS AND ATTORNEYS AT LAW

Couch White, LLP
540 Broadway
P.O. Box 22222
Albany, New York 12201-2222
(518) 426-4600

Kevin M. Lang
Partner

Direct Dial: (518) 320-3421
Telecopier: (518) 426-0376
email: klang@couchwhite.com

December 17, 2012

VIA E-MAIL AND OVERNIGHT DELIVERY

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

Re: SAPA No. PAS-41-12-00009-P – Rates for the Sale of Power and Energy

Dear Ms. Delince:

Enclosed please find the Comments of the City of New York, Metropolitan Transportation Authority, New York City Housing Authority, New York State Office of General Services, and Port Authority of New York and New Jersey on the New York Power Authority's proposal to increase the Fixed Costs component of the production rates for New York City Governmental Customers for 2013. These comments are submitted in response to the notice published in the State Register on October 10, 2012.

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

Sincerely,

COUCH WHITE, LLP

Kevin M. Lang

Enclosure
cc: Edna Wells Handy, Commissioner, DCAS
Mitch Gipson, Chief of Staff, DCAS
Ellen Ryan, Acting Deputy Commissioner, DCAS Energy Management
Susan Cohen, Assistant Commissioner, DCAS Energy Management
Sergej Mahnovski, Director, OLTPS
James Pasquale, Senior Vice President Marketing/Economic Development, NYPA
L. Helle Maide, Director - Key Accounts, NYPA
Keith Hayes, Manager - Key Accounts, NYPA

Vincent Gil, Account Executive
David E. Keller, Senior Deputy Budget Director, MTA
James Henly, Esq., General Counsel, MTA
Rory Christian, Director – Energy, Finance, & Sustainability Management - NYCHA
Andreas Spitzer, Chief Financial Officer, NYCHA
Stephen Starowicz, Director - Energy Planning & Procurement, OGS
Franklin Hecht, Chief Financial Officer, OGS
Christine Weydig, Deputy Director - Office of Environmental & Energy Programs, PANYNJ
Christopher Zeppie, Director - Office of Environmental & Energy Programs, PANYNJ

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POWER AUTHORITY
OF THE STATE OF NEW YORK

Rates for the Sale of Power and Energy	SAPA No. PAS-41-12-00009-P

COMMENTS OF
THE CITY OF NEW YORK, METROPOLITAN TRANSPORTATION AUTHORITY, NEW YORK CITY HOUSING AUTHORITY, NEW YORK STATE OFFICE OF GENERAL SERVICES, AND PORT AUTHORITY OF NEW YORK AND NEW JERSEY

December 17, 2012

COUCH WHITE, LLP
540 BROADWAY
ALBANY, NEW YORK 12207
Telephone: (518) 426-4600
Telecopier: (518) 426-0376

PRELIMINARY STATEMENT

On June 1, 2012, the New York Power Authority ("NYPA") distributed its *"Preliminary Staff Report – New York City Governmental Customers Annual Planning and Pricing Process Analysis, Including: Preliminary 2013 Cost-of-Service"* ("Preliminary Report") to the New York City Governmental Customers. On October 10, 2012, NYPA issued a notice of proposed rulemaking in the State Register, stating that it was considering increasing the fixed cost component of the production rates it charges its Governmental Customers by 2.4 percent compared to the rates adopted for 2012.[1]

Pursuant to § 202 of the State Administrative Procedure Act ("SAPA"), the City of New York ("City"), Metropolitan Transportation Authority, New York City Housing Authority, New York State Office of General Services, and Port Authority of New York and New Jersey (for purposes of these comments, "NYCGCs") hereby submit these comments in response to the notice of proposed rulemaking. The NYCGCs have a number of concerns with the proposed 2013 rate year fixed cost increase. In some instances, the proposed fixed costs are overstated; in others, the period of time over which the fixed costs are collected from the NYCGCs should be lengthened. The NYCGCs respectfully urge the NYPA Board of the Trustees ("Board") to modify the proposed fixed costs as described, and for the reasons, set forth herein. If the changes set forth below are accepted, instead of increasing, 2013 fixed costs would be reduced from NYPA's proposed 2013 levels by $54.5 million, or 32.8 percent.

[1] Although the comment period was due to expire on November 26, 2012, NYPA advised the New York City Governmental Customers via email on November 14, 2012 that the comment period was extended through December 28, 2012.

PROCEDURAL SETTING

In accordance with the provisions of the Long Term Agreements ("LTAs") between the NYCGCs and NYPA, earlier this year NYPA prepared the Preliminary Report, which identifies and briefly describes NYPA's proposed fixed and variable costs for the 2013 Cost-of-Service. On June 1, NYPA distributed the Preliminary Report to the NYCGCs. Starting on June 20, 2012, the City submitted discovery requests to NYPA related to the Preliminary Report and 2013 Cost-of-Service.

In order to comply with the requirements of the LTAs, NYPA must provide preliminary fixed cost estimates to the NYCGCs long before it engages in its planning and budgeting processes for the ensuing year, resulting in a timing mismatch.[2] Based on the discovery responses provided by NYPA, it appears that some fixed cost categories reflected increases that were not based on actual analysis or factual foundation, and the proposed levels failed to recognize that NYPA's actual fixed costs have been less than the figures contained in the prior years' Costs-of-Service. Indeed, for at least a few years, NYPA's experience has been that its actual costs levels have been millions of dollars less than its final projected fixed cost levels, resulting in cost over-recoveries that heretofore have not been returned to the NYCGCs.

This year, NYPA advised the NYCGCs that it would be refining the proposed 2013 fixed cost figures over the summer of 2012 and presenting more accurate information to the Board at its September 2012 meeting. NYPA committed to provide that updated information to the NYCGCs once it was reviewed with the Board. That did not happen. The NYCGCs recognize that Hurricane Sandy recently caused many disruptions to the ordinary course of

[2] Although outside the scope of this matter, the NYCGCs urge the Board to consider changes to this process to make it more meaningful. The provision of vague and unreliable cost information does not serve any party's interest, and the NYCGCs would be willing to explore with NYPA ways to improve the process by which rates are set for the upcoming year.

business, but present circumstances do not explain why the updated information was not provided to the NYCGCs shortly after the September meeting, and weeks before the Hurricane.

Because the NYCGCs do not have updated information regarding changes made to the Preliminary Report and accepted by the Board at its September meeting, these comments are based on the information presented in the Preliminary Report and through the discovery responses provided by NYPA to the NYCGCs. However, the relatively small difference between the change in the level of fixed costs contained in the Preliminary Report and in the October 10 notice of proposed rulemaking lead the NYCGCs to conclude that the overall structure and components of the forecasted 2013 fixed cost levels have not changed materially.

SUMMARY OF POSITION

The Preliminary Report indicated that NYPA intended to increase the fixed cost component of the production rates it charges the NYCGCs by 3.9 percent, or $6.3 million, compared to the fixed cost levels included in the final 2012 Cost-of-Service. According to the October 10, 2012 notice of proposed rulemaking, the size of the increase was reduced to 2.4 percent, or approximately $3.8 million. However, the notice did not provide any details regarding the adjustments made to the figures in the Preliminary Report, and NYPA inexplicably has not yet otherwise provided such information to the NYCGCs.

Certain components of the estimated 2013 fixed costs are overstated or otherwise should be adjusted. Accordingly, the NYCGCs request that NYPA's 2013 fixed costs be reduced by $54.5 million, or 32.8 percent, as shown in Appendix I. The largest component of the reduction is associated with their request to adjust the debt service period for the 500 MW facility to correspond with the plant's projected service life. Additional adjustments relate to NYPA's amortization of storm and other non-recurring costs, asset retirement funds for the 500

MW facility and Charles A. Poletti Generating Station ("Poletti"), Poletti inventory costs, General Electric ("GE") litigation costs, and recurring operations and maintenance ("O&M") expense levels for the small hydroelectric facilities operated by NYPA for the benefit of the NYCGCs ("Small Hydros"). The NYCGCs dispute these increases on the basis of generally accepted cost recovery principles and the fact that that NYPA's plans are inconsistent with Governor Cuomo's persistent statements that government must take the lead by trimming spending and learning to make do with less.

The NYCGCs respectfully urge the Board not to "rubberstamp" the 2013 fixed cost proposal developed by NYPA management. The Board should exercise its fiscal responsibility to the NYCGCs and make the adjustments discussed herein.

DISCUSSION

THE PROPOSED LEVELS OF FIXED COSTS SHOULD BE ADJUSTED DOWNWARD

The Preliminary Report indicates that NYPA is seeking to increase the NYCGCs' contribution to its O&M and shared services expense categories, while slightly reducing the amounts it collects for recovery of its capital costs and for miscellaneous other expenses.[3] For the reasons set forth below, the NYCGCs respectfully submit that certain of the fixed cost line items are overstated or otherwise should be adjusted. Most significantly, the NYCGCs urge the Board to re-examine and revise the manner in which NYPA recovers the debt service expense associated with its 500 MW facility. Extending the debt service repayment period to coincide with the projected service life of the facility, an accounting practice that is routinely employed

[3] Because the NYCGCs did not receive any details regarding the Board's action in September, or how the projected fixed cost levels changed as set forth in the notice of proposed rulemaking, they are unable to comment on the exact fixed cost changes. The NYCGCs therefore reserve the right to submit supplemental comments once the updated 2013 fixed cost projections are provided by NYPA.

by electric utility companies and electric utility regulatory commissions, would reduce 2013 fixed cost levels by about $37.7 million.

A. ADJUSTING THE 500 MW FACILITY'S DEBT SERVICE COLLECTION PERIOD WOULD IMPROVE THE FACILITY'S ECONOMICS WHILE REDUCING THE COST BURDEN ON THE NYCGCS

Over the past few years, the City has presented information to the Board regarding rising fixed cost levels and continued losses associated with the 500 MW facility and the Small Hydros. With respect to the former, a significant portion of the reported losses are due to unnecessarily high levels of debt service repayment costs associated with NYPA's accelerated cost recovery method. If NYPA follows generally accepted cost-recovery principles and extends the recovery period of the debt service expense associated with the 500 MW facility to match its projected service life, the annual fixed costs charged to the NYCGCs would be reduced significantly and the economics of the facility would improve dramatically.

1. <u>Continuation Of The Current Financial Trend Is Not Acceptable</u>

The fixed cost levels associated with the 500 MW facility have been increasing over the past several years while the net sales and revenues associated with the facility have been decreasing. Examining this troubling trend provides valuable information regarding NYPA's operation of the 500 MW facility. Table 1 demonstrates that the inclusion of the 500 MW facility in the NYCGCs' supply portfolio has resulted in a positive net cost position in the annual Cost-of-Service in each of the past few years, and that this trend will continue in 2013. If this facility was privately owned, its owner presumably would be examining ways to reverse the continued financial loss trend and improve the economics of the facility. The Board should be doing the same – the operations and financial structure of the 500 MW facility should be thoroughly examined to identify and implement measures to improve its economics.

Table 1 500 MW Facility Actual/Projected Annual Net Costs/(Benefits) ($ Millions)			
Year	Revenues & Capacity Value	Fuel & Fixed Costs	Net Cost/(Benefit)
2010 (Actual)	(227.4)	232.8	5.4
2011 (Actual)	(209.7)	229.1	19.4
2012 (Projected)	(177.1)	230.2	53.1
2013 (Projected)	(203.9)	214.9	11.0

The Board should not be satisfied with the recent financial performance of the 500 MW facility. The NYCGCs have carefully reviewed the information in the Preliminary Report, and other information provided by NYPA over the past few years, to determine changes that could be made to improve the economics of the 500 MW facility. Aside from operational changes,[4] the NYCGCs have determined that one critical change – extending the debt repayment terms to the projected service life of the 500 MW facility – is not only consistent with industry standard but would materially benefit the economic performance of the facility.

2. The Board Should Adjust The Debt Service Repayment Terms Of The 500 MW Facility To Match Its Projected Service Life

One of the most common depreciation methods used throughout the industry, and by NYPA, for calculating depreciation expense is the straight-line depreciation method. In support of its recent request to the Federal Energy Regulatory Commission ("FERC") for an

[4] The NYCGCs continue to believe that cycling the plant to better follow market demand would improve the economics of the facility substantially.

increase in its transmission revenue requirement,[5] NYPA submitted sworn direct testimony of Thomas A. Davis, its Vice President of Financial Planning & Budgets. At page 12, line 7 of his testimony, Mr. Davis stated without qualification or limitation that "NYPA uses the straight line method of depreciation expense."

It is a generally accepted principle of utility ratemaking that when using the straight-line depreciation method, an asset's capital costs are amortized over the asset's projected service life. *See, e.g.*, Bonbright, *et al.*, Principles of Public Utility Rates, 2d Ed., Public Utilities Reports, Inc., 1988, pp. 276-277; Phillips, The Regulation of Public Utilities, Public Utilities Reports, Inc., 1993, pp. 271-272; *Federal Power Commn. v. Memphis Light, Gas & Water Div.*, 411 U.S. 458, fn 1 (1973) ("Under the straight-line method, the depreciation allowance for an asset remains equal over its useful life"); *Lindheimer v. Ill. Bell Tel. Co.*, 292 U.S. 151, 168 (1934) (Under the straight-line method of depreciation, "the annual depreciation charge is obtained by dividing the estimated service value by the number of years of estimated service life"); *R.J. Reynolds Tobacco Co. v. City of New York Dept. of Finance*, 237 A.D.2d 6, 7-8 (1st Dep't 1997) ("straight-line depreciation correlates with a pro rata depreciation over the useful life of the asset; the deduction is calculated by an equation that divides the asset's value, after a reduction for a postulated salvage value, by its useful life").

While NYPA appears to adhere to this principle for purposes of its transmission revenue requirement, as demonstrated by Mr. Davis' testimony and work papers, it is not doing so when calculating the recovery of the 500 MW facility debt service costs from the NYCGCs under the LTAs. Rather, for the NYCGCs, NYPA uses an accelerated depreciation approach, depreciating the 500 MW facility over a much shorter period of time. Figure 5B of the

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5 *New York Independent System Operator, Inc.*, Docket No. ER12-2317, "NYPA Revised Transmission Revenue Requirement" (dated July 27, 2012).

Preliminary Report indicates that the 500 MW facility has a projected service life of at least 25 years, with an "estimated retirement date" of May 1, 2030. However, Figures 4B through 4E of the Preliminary Report reveal that NYPA is recovering its debt service expense for the 500 MW facility from the NYCGCs over substantially shorter periods, ranging from 16 to 20 years. The last bond matures in 2025, well short of the asserted retirement date of the facility.

When questioned about this matter, NYPA claimed that it takes "a conservative approach with respect to the structure (tenor) of debt issued to support major generation and transmission assets."[6] The NYCGCs calculate that if NYPA acted in accordance with generally accepted depreciation principles, as upheld by the United States Supreme Court and New York courts, the debt service costs associated with the 500 MW facility would decrease by between $31.5 million and $37.7 million in 2013, depending on the service life used (discussed below).[7] Further, the use of straight line depreciation over an asset's entire service life – the approach NYPA uses for its transmission assets – assures intergeneration equity (*i.e.*, that future customers pay their fair share of the debt service costs associated with the 500 MW facility).[8] Accordingly, the NYCGCs strongly urge the Board to direct NYPA to revise the accounting methodology for recovery of the debt service expense associated with the 500 MW facility to apply straight-line depreciation over the entire projected service life associated with the facility.

As the Board considers this matter, the NYCGCs also request that the Board extend the projected service life, and the amortization period, applicable to the 500 MW facility

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6 NYPA Response to City Request 31a, dated July 26, 2012.

7 While the NYCGCs continue to disagree with NYPA's imposition of a lost opportunity cost rate on unrecovered costs over time, the NYCGCs included a 3.5 percent opportunity cost rate in its straight line depreciation calculation.

8 NYPA's assertion that its approach results in interest rate savings is irrelevant because of intergeneration equity issue. Even with such savings, the NYCGCs are being subjected to more than their fair share of the costs of the 500 MW facility.

from 25 years to a minimum of 30 years. Such an extension is consistent with generally accepted practices within the electric industry and NYPA's submissions in its FERC transmission rate case.

The NYCGCs have researched publicly available information on projected service lives of natural gas-fired combined cycle generating facilities, similar to the 500 MW facility, and found no support for use of a 25-year service life. Rather, service lives of 30 to 40 years for such facilities are commonly used for many purposes (including depreciation). For example, in its development of the demand curves for the capacity markets, the New York Independent System Operator, Inc.'s expert consultants used a 30-year capital recovery period for all of the technologies it considered, including a Frame 7F unit.[9]

Moreover, a 30-year service life for the 500 MW facility is consistent with what NYPA presented in its pending FERC transmission rate case. Specifically, the information set forth in WP-2 to Mr. Davis' sworn testimony to the FERC indicates that NYPA is using a 30-year service life for the following accounts: boiler plant equipment (acct. 312), turbo generator units (acct. 314), fuel holders, producers, and accessory equipment (acct. 342), accessory electric equipment (acct. 345), and miscellaneous power plant equipment (acct. 346). In establishing the NYCGCs' Cost-of-Service, the NYCGCs are not aware of any legitimate reason for using different service lives for the same asset. The NYCGCs respectfully urge the Board to adopt the use of the same 30-year service life, and amortization period, for the 500 MW facility that NYPA has presented in its FERC transmission rate proceeding.

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9 *New York Independent System Operator, Inc.*, Docket No. ER11-2224, NYISO Tariff Filing, dated November 30, 2010, Attachment 2 – "Independent Study to Establish Parameters of the ICAP Demand Curve for the New York Independent System Operator", dated November 15, 2010, p. 59.

NYPA's primary purpose for using a shorter service life appears to be to expedite the recovery of the 500 MW facility's capital costs from the NYCGCs and ensure that, no matter what happens after 2017, NYPA will have recovered a vast majority of its debt service costs. This approach contradicts the ratemaking principle that the entire service life of an asset is the basis for the time period over which asset costs are recovered. Furthermore, it unnecessarily increases the costs and burdens imposed on the NYCGCs by tens of millions of dollars each year, funds that could otherwise be used to serve the important public functions carried out by those entities. The additional costs associated with the expedited debt service recovery also negatively impacts the economics of the 500 MW facility.

For all of the foregoing reasons, the Board should: (i) align the debt service costs with the entire projected service life of the 500 MW facility; and (ii) adopt a service life of no less than 30 years for the 500 MW facility. In summary, extending the debt service expense recovery period to the current projected service life of the 500 MW facility would reduce the 2013 Cost-of-Service by $31.5 million, or 19.0 percent, and extending the projected service life from 25 years to 30 years would further reduce the 2013 Cost-of-Service by $6.2 million, or 3.7 percent. These adjustments are shown in Appendix 1, and Appendix II shows the calculations supporting them.

3. NYPA Should Evaluate The Possibility of Refinancing Its Debt Given Current Market Conditions

According to the Preliminary Report and other information provided by NYPA, there are three sets of fixed rate revenue bonds outstanding related to the 500 MW facility – Series 2002A, 2007C, and 2011A. In response to a City question about NYPA's actions to refinance this debt, NYPA stated that it had advance refunded portions of the 2002A bonds with the 2007C and 2011A bonds, and that the balance of the 2002A bonds matures in 2013.[10]

While it may not be prudent to refinance the balance of the 2002A bonds given their impending maturity date, the NYCGCs recommend that the Board investigate whether cost savings could be achieved from refinancing the 2007C and/or 2011A bonds. Although both bond series are not advance refundable, the former are not callable until 2017, and the latter are not callable, the realities of the marketplace suggest that these bond provisions do not constitute insurmountable impediments to refinancing. Given current low finance rates, it is at least worth investigating the potential savings that could be achieved via refinancing, and whether the costs of refinancing would be justified by the savings.

B. CERTAIN NON-RECURRING EXPENSES SHOULD BE RECOVERED OVER A LONGER PERIOD OF TIME

The NYCGCs' review of the supporting documentation provided by NYPA for the 2013 fixed costs revealed that NYPA does not always follow standard or typical utility accounting practices for differentiating between capital costs and O&M expenses, and in some cases seeks to recover costs its expends on an annual basis that should be spread out and recovered over multiple years. The NYCGCs recognize that there are differences between NYPA and regulated, investor-owned utilities, and that NYPA does not maintain its books in precisely the same way as other utilities. Nevertheless, NYPA does treat capital costs differently from O&M expenses – the former is typically recovered over a period of years while the latter is recovered in the current or subsequent year.

When major storms occur and damage utility infrastructure, the New York Public Service Commission ("PSC") directs its regulated utilities to maintain separate accounting of the

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[10] NYPA Response to City Request 32, dated July 26, 2012.

capital costs and O&M expenses associated with storm recovery efforts. After reviewing the prudence of the utilities' actions and activities, the PSC typically allows the utilities to recover the prudently incurred expenses over a period of years (the number depends on the magnitude of the expenses) and add the capital costs to their rate bases, where they are recovered via straight-line depreciation over the entire service lives of the assets. In contrast, according to the Preliminary Report, NYPA is seeking to recover 100 percent of its Hurricane Irene-related costs, including both capital costs and O&M expenses, from the NYCGCs in 2013, and there is no opportunity for any review of the prudence of NYPA's actions or the reasonableness of NYPA's actual storm-related expenditures.

NYPA identified that Hurricane Irene caused substantial damage to some of its hydroelectric facilities and required portions of some dams to be rebuilt. In total, NYPA included non-recurring Hurricane Irene costs of $4.5 million in its preliminary 2013 fixed costs. For a regulated utility, the cost associated with rebuilding a dam would be considered a capital cost that is put into rate base and recovered from the utility's customers over the remaining service life of the asset. However, NYPA inexplicably is seeking to recover the entire cost of the project from the NYCGCs in 2013. The NYCGCs attempted to seek an understanding and documentation from NYPA as to how it classifies and recovers such expenditures, but NYPA declined to provide any details, stating that its accounting department makes such decisions.

NYPA has proposed similar treatment for some other non-recurring costs that are non-storm-related. In response to information requests by the City, NYPA identified $2.0

million of projects associated with the 500 MW facility that it calls "non-recurring" and which the NYCGCs and most others in the utility industry would consider to be capital projects.[11]

For both storm-related costs and non-recurring projects that are capital in nature (*e.g.*, dam reconstruction at the Small Hydros and roof replacement of the 500 MW facility), the NYCGCs respectfully urge the Board to change the recovery period from one year to the remaining projected service lives of the assets. If the Board declines to accept this approach, it should at least direct NYPA to amortize these costs over a three-year period.[12] In this instance, amortizing the \$6.5 million of non-recurring storm and capital related costs over a period of three years reduces NYPA's 2013 fixed cost estimate by \$4.3 million or 2.6 percent.

C. THE BOARD SHOULD ADJUST ITS STORM-RELATED COST RECOVERY PROCEDURES TO PREVENT OVERPAYMENTS

In analyzing the issue discussed above, the NYCGCs identified a corollary concern. At present, NYPA has not completed its storm-recovery work from Hurricane Irene, and, in some cases, has not even started certain projects. In response to questions posed by the NYCGCs regarding the storm costs, NYPA stated that for some projects, it has only estimates, and it lacks certainty regarding the actual costs it will incur. It appears to the NYCGCs that

[11] While the amounts at issue for the 2013 Cost-of-Service are relatively small, NYPA has advised the NYCGCs that it considers the replacement of the roof of the 500 MW facility, which it reports will cost millions of dollars, "to be an operating cost and not a capital expense." Informational Memorandum from NYPA to the NYCGCs, dated September 14, 2012, unnumbered page 3. The NYCGCs respectfully submit that for any other utility, the replacement of an entire roof would be considered a capital project, not a maintenance item, and the costs would be recovered from customers over time, not in one year. Accordingly, there is significant reason for the Board to comprehensively reconsider NYPA's approach to recovery for capital-type non-recurring costs.

[12] In its Informational Memoranda to the NYCGCs, NYPA indicated that it would amortize the Hurricane Irene-related costs over three years. NYPA also stated that it "will be reflecting this change in the SAPA Notice." The notice issued in the State Register makes no reference to this change, and it is not known whether some or all of the \$2.5 million difference in the level of the fixed costs for 2013 stated in the Preliminary Report and that notice pertain to this matter.

many of these estimates are overstated. Nevertheless, NYPA has included those cost estimates in the 2013 fixed costs. The problem is that there is no reconciliation mechanism; in the event that actual costs incurred are less than estimates, NYPA will be overcollecting these costs from the NYCGCs.

This method of recovering costs is neither fair nor reasonable and should be changed.[13] Two appropriate alternate approaches are: (i) NYPA waits to recover the costs until it has completed the work and knows how much was actually spent; or (ii) NYPA includes the projected costs in the subsequent year(s)' fixed costs, but those costs are subject to reconciliation once the work is completed and the actual amounts spent are known. Both alternatives, which are consistent with generally accepted utility ratemaking practices, would ensure that NYPA is made whole for the costs it incurs, and that the NYCGCs are not overpaying for the work performed.

The NYCGCs urge the Board to reconsider its approach to recovery of non-recurring storm-related costs, especially considering recent events and the potential for similar large-scale storms to affect the downstate region in the future. The NYCGCs should be charged only for the costs incurred to serve them, and no more.

D. POLETTI-RELATED COSTS SHOULD BE REMOVED FROM THE COST-OF-SERVICE

1. Contributions to the Asset Retirement Fund Should Cease

The Preliminary Report includes multiple categories of fixed costs associated with the now-closed Poletti, including an annual charge of $3.9 million for its asset retirement fund. Last year, the City argued that all going-forward costs related to Poletti should come from the

[13] As discussed below, there is no lawful basis for NYPA to retain amounts that it concedes are in excess of its actual costs.

asset retirement fund, and therefore be excluded from the development of future fixed cost levels. Based on recent information, the NYCGCs now jointly request that even the $3.9 million collected from the NYCGCs for the asset retirement fund be terminated.

NYPA advised the NYCGCs that it initially projected the cost of dismantling Poletti would be in excess of $50 million. Based on this estimate, NYPA began charging the NYCGCs $3.9 million per year for the asset retirement fund. According to NYPA's Informational Memorandum to the NYCGCs dated August 23, 2012, and repeated in three subsequent Informational Memoranda (dated September 14, 2012; September 21, 2012; and October 17, 2012), NYPA will have collected $38 million from the NYCGCs as of December 31, 2012.

At its September 24, 2012 meeting, the Board approved a contract with LVI Demolition Services, Inc. to dismantle the Poletti facility for $20,580,921.[14] In its presentation on that matter, NYPA management reported that $33.4 million has been collected from the NYCGCs, and $12.2 million has been expended on decommissioning activities at Poletti.[15]

Also at the September 24 meeting, NYPA management advised the Board that it intends to continue collections for the asset retirement fund through 2014. Regardless of whether the $38 million figure or $33.4 million figure is correct, both figures are greater than the total stated cost of demolition - $32.78 million. Given these facts, there is no basis to continue any contribution to the asset retirement fund as part of the fixed costs. In fact, in response to the City's concerns regarding the asset retirement fund last year, Staff reported to the Board: "[i]f

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[14] Informational Memorandum from NYPA to the NYCGCs, dated October 17, 2012, unnumbered page 2, and web cast from the September 24 meeting, available at http://streaming1.expeditevcs.com:8080/NYPA/NYPA092412-003.htm.

[15] The discrepancy between the numbers presented to the NYCGCs ($38 million) and the Board ($33.4 million) is not explained by NYPA.

the decommissioning costs are lower than those that have been forecasted for COS purposes, the Customers will either have the period of collection truncated or the annual assessed cost lowered."[16] Accordingly, the NYCGCs respectfully request that the Board adhere to the position it adopted last year and remove this item from the 2013 Cost-of-Service. Removing the Poletti asset retirement charge figure from the calculation of 2013 fixed cost levels reduces NYPA's 2013 fixed cost estimate by 2.3 percent.

On a corollary point, NYPA reported to the Board that in 2011, some unidentified Poletti assets were sold for \$1.3 million. Because the plant was retired at that time, those sales should have been considered part of the salvage value of the plant and the revenues should have been credited to the NYCGCs. The NYCGCs have reviewed the records provided by NYPA since 2011, and they have not found any accounting entry crediting the \$1.3 million of net proceeds. It would be unfair and unreasonable for NYPA to charge the entire cost of the dismantling Poletti to the NYCGCs but keep all, or even a portion, of the salvage value. Accordingly, the Board should credit the \$1.3 million to the NYCGCs immediately.

2. <u>Recovery Of Materials And Supplies Inventory Costs Should Come From The Asset Retirement Fund</u>

The City has objected to NYPA's recovery of obsolete Materials and Supplies Inventory from Poletti for years. Last year, NYPA management incorrectly characterized the City's objections in its presentation to the Board, claiming that the City had not questioned any specific costs. To ensure that there is no confusion regarding the City's objection, which is joined by the other NYCGCs, the NYCGCs state that they object to <u>all</u> of the Poletti-related Inventory costs NYPA proposes to include in the 2013 Cost-of-Service (approximately \$1.3 million). None of those costs should be included in the 2013 Cost-of-Service because all of the

[16] December 15 Minutes, p. 40.

costs should be recovered from the asset retirement fund. Additionally, the NYCGCs object to the application of a 4.25 percent lost opportunity cost to the principal amount of the Inventory.

In support of this position, the NYCGCs assert that there is no provision in the LTAs that permits the addition of the lost opportunity cost to the recovery of the principal amount. Further, because the inventory was purchased long ago, NYPA's claim that it has experienced or will experience any lost opportunity costs by continuing to maintain the Inventory on its books until it is written off lacks merit. Indeed, NYPA has offered no documentation or other support that it experienced any negative financial effects as a result of carrying the Inventory on its books over that last few decades. Finally, the NYCGCs are not aware of any generally accepted accounting practice in the utility industry that provides for the inclusion of lost opportunity costs on a write-off of obsolete inventory, and NYPA has not pointed to any authority for its action.

The NYCGCs note that while the City raised these concerns last year, and NYPA management apparently advised the Board that it disagreed with the City's arguments, the Board did not offer any explanation of the basis of its decision to reject those arguments. This year, as part of its discovery on the Preliminary Report, the City pursued NYPA management's rationale for its position. In response, NYPA stated that "[t]he Poletti Asset Retirement Fund was established for the retirement of the physical building. The inventory is equipment that has no salvageable value."[17]

The NYCGCs respectfully submit that this response is not responsive to the prior objections and cannot form any basis for the Board to reject the NYCGCs' request that these costs be removed from the Cost-of-Service. The asset retirement fund will be used to cover the

[17] NYPA Response to City Request 33b, dated July 26, 2012.

cost of far more than just the power plant building because the act of demolition includes far more than just taking down the building.[18] Moreover, whether the Inventory has any salvageable value is irrelevant to whether this cost should be recovered via the asset retirement fund.

For the foregoing reasons, the $1.3 million charge should be eliminated from the 2013 fixed cost estimate and the inventory costs recovered from the asset retirement fund. If this request is denied, the Board of Trustees should at least remove the opportunity cost adjustment as being improperly imposed. Removing the Poletti inventory costs figure from the calculation of 2013 fixed cost levels reduces NYPA's 2013 fixed cost estimate by 0.8 percent.

E. CERTAIN FIXED COSTS ASSOCIATED WITH THE 500 MW UNIT SHOULD BE ADJUSTED DOWNWARD

1. Decommissioning Costs

NYPA is charging the NYCGCs $3.8 million each year as a contribution to the decommissioning/asset retirement fund for the 500 MW facility; as of July 1, 2012, NYPA will have collected $21.942 million.[19] This charge is based on an estimated decommissioning cost of $60 million in 2000 dollars. That cost was not based on a decommissioning study or other similar analysis.[20] Given the amount of the contract the Board recently approved for the deconstruction of Poletti, discussed above, it is likely that NYPA's estimate for decommissioning the 500 MW facility is overstated.

Considering that the 500 MW facility was built using modern construction methods that likely will make its deconstruction easier, and absent information to the contrary, it

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[18] *See* NYPA Request for Quotations, dated February 27, 2012, provided in response to City Request 35c.

[19] Preliminary Report, Figure 5B.

[20] In response to City Request 37, NYPA stated that it has no decommissioning plan for the 500 MW unit and no documentation on the estimated cost of the decommissioning and deconstruction of the unit.

is reasonable to project that the cost to deconstruct the 500 MW unit should be about the same, or less, than the cost to deconstruct Poletti. Therefore, the total decommissioning cost for the 500 MW facility should be adjusted downward to $33 million in 2012 dollars, an amount approximately equivalent to the cost of decommissioning Poletti.[21] Recalculating Figure 5B using $33 million in 2012 dollars instead of $60 million in 2000 dollars reveals that the amount already collected will exceed the amount needed in 2036, the projected retirement date assuming a 30-year service life (discussed above).

Accordingly, there is no reason for the NYCGCs to make any additional contributions to the asset retirement fund for the 500 MW facility. The Board should therefore direct NYPA to remove these fixed costs from the 2013 Cost-of-Service. This adjustment reduces the 2013 fixed costs by 2.3 percent.[22]

2. GE Litigation Expenses

In each of the past few years, the City has disputed the GE litigation expense line item. Last year, the Board expressly directed NYPA to provide certain information to the NYCGCs related to this matter,[23] but the NYCGCs have never received that information. More importantly, neither NYPA nor the Board addressed the specific concerns raised by the City, particularly the assertions that the total amount of legal fees was unreasonable.

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[21] As discussed in the City's comments last year, NYPA proceeded with decommissioning activities at Poletti before completing a decommissioning plan. Had NYPA completed the plan before commenced any deconstruction activities and better coordinated deconstruction activities (*e.g.*, avoiding multiple mobilizations and demobilizations), the total costs likely would have been lower.

[22] The recalculated Figure 5B is included as Appendix III.

[23] December 15 Minutes, p. 42.

The NYCGCs continue to assert that the legal fees associated with this matter are excessive, equating to approximately 3,460 to 5,200 hours of work.[24] Due to the absence of any support for the expenditures, the Board should not allow their continued inclusion in the fixed costs. Removing all GE litigation expenses further reduces NYPA's 2013 fixed cost estimate by $0.4 million or 0.2 percent.

F. FIXED COSTS ASSOCIATED WITH THE SMALL HYDROS SHOULD BE ADJUSTED DOWNWARD

1. The Board Should Investigate Steps To Make The Facilities Economic

Like the 500 MW facility, the Small Hydros have performed poorly from a financial perspective. However, their poor economics cannot be solved by adjusting the recovery period for their debt service expenses. Table 2 below shows the historical and projected total revenues and costs associated with the Small Hydros (as allocated to the NYCGCs).

Table 2
Small Hydros Actual/Projected Annual Net Costs/(Benefits)
($ Millions)

Year	Revenues & Capacity Value	Fixed Costs	Net Cost/(Benefits)
2010 (Actual)	(6.1)	11.9	5.8
2011 (Actual)	(6.4)	14.3	7.9
2012 (Projected)	(7.2)	16.5	9.3
2013 (Projected)	(6.1)	19.8	13.7

[24] This estimate is based on an hourly rate of $500 to $750.

In light of these numbers, the Board should conduct an audit of the operations of the Small Hydros to determine whether and what cost-savings measures could and should be implemented to improve their economics. If the economics cannot be improved, the Board should direct NYPA management to develop a list of options for the future of these facilities so that the NYCGCs can make an informed decision whether to continue to support the operation of, and additional capital investments in, these facilities.

In addition to performing an audit, the Board should take immediate action to reduce expenditures at these facilities. This action should include adoption of the following recommendations.

2. The Costs Related To The Kensico Hydroelectric Facility Should Be Removed From The 2013 Cost-Of-Service

One of the Small Hydros, the costs of which are included in the Preliminary Report, is the Kensico Project, a three-unit, 3 MW facility located in Westchester County. In 2012, the Kensico Project ceased operations. Therefore, all costs associated with that Project should be removed from the 2013 Cost-of-Service.

Upon information and belief, NYPA's expenditures at that location have been limited to matters specifically related to the operation of the hydroelectric facility, itself. Because the Kensico Dam and Reservoir, including the stilling pool, tailrace and surrounding lands, are part of the City's water supply system, they have been, and will continue to be, actively maintained by the City's Department of Environmental Protection ("DEP"). With the cessation of electricity production at the Kensico Project, NYPA should not have any continuing responsibility at that site. Therefore, there should be no need for NYPA to retain contractors or consultants to provide services at that site, make any future capital improvements at or purchases for that facility, or incur any other expenses related to it. However, it does not appear that

NYPA has made any downward adjustment to the fixed costs associated with the Small Hydros to account for this closure.[25]

The NYCGCs respectfully request that the Board instruct NYPA to remove all costs associated with the Kensico Project. If there is any cost that cannot be removed, NYPA and/or the Board should explain the reason for continuation of any such cost.

3. Recurring O&M Costs Must Be Reduced

According to the information provided by NYPA in Figure 2 to the Preliminary Report and in response to City Request 23, in 2013 NYPA is projected to spend over $1 million on contractors, consultants, direct purchases, and stores for the Small Hydros. These costs are in addition to the $3.5 million for on-site employees. This level of expenditures is excessive and unjustified and should be reduced substantially.

To put these expenditures in perspective, Table 3 compares the recurring expenses for the Small Hydros and 500 MW facility. Whether viewed in terms of the size of the facilities or their electrical output, the Small Hydros are tiny relative to the 500 MW facility. But, on a unitized cost basis, the table shows that the level of recurring O&M expenses are substantially greater for the Small Hydros. The NYCGCs submit that the expense levels are too high and should be reduced.

[25] The cost information for these facilities in the Preliminary Report is consolidated, preventing the NYCGCs from discerning the costs associated with any individual facility.

Table 3 Comparison of Recurring O&M Expenses					
	Small Hydros		**500 MW Facility**		**Ratio***
Projected 2013 Sales (MWh)	142,211		2,931,360		5%
	Total Expense	**$/MWh**	**Total Expense**	**$/MWh**	**Ratio ($/MWh)***
Total Site Payroll	$3,541,101	24.90	$11,258,839	3.84	648%
Direct Purchases	$213,006	1.50	$966,396	0.33	454%
Store Issues	$77,168	0.54	$471,494	0.16	337%
Fees & Dues	$5,051	0.04	$233,495	0.08	50%
Office & Station	$187,556	1.32	$572,680	0.20	660%
Contracted Services	$691,451	4.86	$6,657,028	2.27	214%
Consultants	$129,759	0.91	$129,308	0.04	2275%
Total	$4,845,093	34.07	$20,289,240	6.92	492%

*Small Hydros Relative to 500 MW Facility

The City asked NYPA for the details on many of these categories of recurring expenses, but they were not provided. Instead, NYPA offered single sentence descriptions of each category. For example, the contracted services category is described as providing "servicing and repair of equipment, facility maintenance services, flashboard installation and removal and property and liability insurance."[26] The consultants category is described as "technical support for environmental and operational issues and compliance."[27] These descriptions do not respond to the City's questions. In fact, the tasks included in the descriptions already appear to be included in the 2013 fixed costs through charges for site employees and the allocated charges for headquarters.

[26] September 21, 2012 Informational Memorandum from NYPA to the NYCGCs, unnumbered page 3.

[27] *Id.*

Because of the lack of information regarding these recurring expenses, there is no way to determine their legitimacy or reasonableness. The NYCGCs can accept that NYPA may need some specialized assistance with certain aspects of regulatory compliance issues at the Small Hydros, but not at the cost levels proposed. Moreover, it is commonplace in the utility industry for utilities to benchmark their costs against those of other similarly-situated companies. The City asked NYPA if it has compared its O&M expense levels to industry averages to determine whether its costs are in line with industry norms. NYPA responded that it has not.[28] Unless and until NYPA substantiates these O&M expenses, the charges should be reduced to levels commensurate with the levels spent on the 500 MW facility, as follows.[29]

Table 4

Proposed Recurring O&M Expense Reductions for Small Hydros

Category	$/MW	Proposed Expense	Revised Expense
Total Site Payroll	3.84	$3,541,101	$546,232
Direct Purchases	0.33	$213,006	$46,930
Store Issues	0.16	$77,168	$22,896
Fees & Dues	0.04	$5,051	$5,051
Office & Station	0.20	$187,556	$27,731
Contracted Services	2.27	$691,451	$322,961
Consultants	0.04	$129,759	$6,257
Total		$4,845,093	$978,059

Adjusting NYPA's projected Small Hydro recurring O&M expense levels to levels commensurate with the identified recurring O&M levels for the 500 MW facility reduces NYPA's 2013 fixed cost estimate by $3.9 million or 2.3 percent.

28 NYPA Response to City Request 25b, dated July 26, 2012.

29 The "Fees & Dues" category was not changed as it was already lower for the Small Hydros than for the 500 MW facility.

G. NYPA SHOULD RETURN ITS EXCESS REVENUES TO THE NYCGCS

In response to questions posed by the NYCGCs during the August 23 teleconference with NYPA, NYPA provided two spreadsheets to the NYCGCs that compared the fixed costs it charged them in 2010 and 2011 to the fixed costs it actually incurred in serving them.[30] These spreadsheets show that NYPA overcollected fixed costs by $5,928,177 in 2010 and by $2,753,127 in 2011. Figures for 2012 are not yet known. These amounts represent profits – amounts received over and above the costs NYPA incurred to provide service to the NYCGCs. While NYPA should be able to recover its prudently incurred and legitimate costs and expenses of providing electric service to the NYCGCs, NYPA should not be profiting at their expense. Indeed, no provision of law permits NYPA to earn profits over and above recovery of its costs and expenses. The NYCGCs therefore request that NYPA refund these fixed cost overcollections to the NYCGCs or use them as a credit to offset 2013 Cost-of-Service.

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30 Informational Memorandum from NYPA to the NYCGCs, dated October 17, 2012.

CONCLUSION

The NYCGCs respectfully request that the NYPA Board of Trustees adjust the level of fixed costs for the 2013 Cost-of-Service in accordance with the discussion and recommendations set forth herein and identified on Appendix 1.

Dated: December 17, 2011
Albany, New York

Respectfully submitted,

Kevin M. Lang, Esq.
Couch White, LLP
540 Broadway
P.O. Box 22222
Albany, New York 12201-2222
Tel: 518-426-4600
Email: klang@couchwhite.com

Decrease in New York City Governmental Customer Fixed Cost Component – Notice of Adoption

Exhibit "B"

Current 2012 and Proposed 2013 Customer Production Rates

NEW YORK CITY GOVERNMENTAL CUSTOMERS

EXHIBIT "B"

Service Tariff No. 100 Rate Comparison (Current vs. Proposed)

	Demand ($/kW)		ENERGY (¢/kWh)											
			SUMMER		SUMMER ON PEAK		SUMMER OFF PEAK		WINTER		WINTER ON PEAK		WINTER OFF PEAK	
Service Classification	**2012**	**2013**	**2012**	**2013**	**2012**	**2013**	**2012**	**2013**	**2012**	**2013**	**2012**	**2013**	**2012**	**2013**
SC 62 Conventional	$0.00	$0.00	8.347	7.746					7.804	7.267				
SC 65 Conventional	$10.69	$8.15	6.458	6.051					5.926	5.581				
SC 66 Conventional	$0.00	$0.00	6.576	5.937					6.576	5.937				
SC 68 Conventional	$17.02	$17.56	6.028	5.637					5.486	5.158				
SC 68 TOD	$18.74	$18.42			7.075	6.782	4.429	4.688			6.120	5.702	4.574	4.668
SC 69 Conventional	$12.50	$12.50	6.344	5.869					5.803	5.391				
SC 69 TOD	$12.88	$13.23			7.595	6.935	5.006	4.887			6.661	5.878	5.148	4.866
SC 69 KIAC TOD	$12.88	$13.23			6.494	5.125	3.906	3.077			5.560	4.068	4.048	3.057
SC 80 Conventional	$1.73	$1.72	6.088	5.461					6.088	5.461				
SC 82 Conventional	$11.82	$11.88	6.362	5.898					5.820	5.418				
SC 85 Conventional	$13.94	$11.36	6.441	6.043					5.915	5.577				
SC 91 Conventional	$10.69	$11.44	6.553	5.988					6.011	5.509				
SC 91 TOD	$14.51	$14.60			7.602	6.985	4.957	4.892			6.647	5.906	5.102	4.872
SC 93 Conventional	$8.26	$7.94	6.527	6.013					5.991	5.539				
SC 98 Conventional	$4.58	$5.42	6.444	5.845					5.902	5.366				
SC 98 TOD	$13.80	$10.21			7.580	6.994	4.979	4.936			6.641	5.932	5.122	4.916

Service Tariff No. 100 Demand Standby Rate Comparison (Current vs. Proposed)

	CONTRACT DEMAND ($/KW per month)				AS USED DEMAND ($/KW per day)			
	High Tension		Low Tension		High Tension		Low Tension	
Service Class	**2012**	**2013**	**2012**	**2013**	**2012**	**2013**	**2012**	**2013**
SC68 TOD	$1.412	$1.388	$1.499	$1.473	$0.534	$0.525	$0.567	$0.557
SC69 TOD	$0.988	$1.014	$1.031	$1.059	$0.373	$0.384	$0.390	$0.400
SC91 TOD	$1.093	$1.100	$1.160	$1.168	$0.413	$0.416	$0.439	$0.442
SC98 TOD	$1.058	$0.782	$1.104	$0.817	$0.400	$0.296	$0.417	$0.309

Service Tariff No. 100 Energy Credit Standby Rate Comparison (Current vs. Proposed)

	ENERGY CREDIT (¢/kWh)							
	SUMMER ON PEAK		SUMMER OFF PEAK		WINTER ON PEAK		WINTER OFF PEAK	
Tension	**2012**	**2013**	**2012**	**2013**	**2012**	**2013**	**2012**	**2013**
High Tension	5.988	5.575	4.014	3.565	5.725	5.134	4.359	3.978
Low Tension	5.692	5.298	3.815	3.388	5.441	4.880	4.143	3.781