POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
Albany, New York

# AGREEMENT FOR THE SALE

# OF NIAGARA PROJECT HYDROELECTRIC POWER AND ENERGY

# TO THE NIAGARA PROJECT HOST COMMUNITIES

Service Tariff No. HC-1 - Firm Hydroelectric Power and Energy

(LEWISTON-PORTER CENTRAL SCHOOL DISTRICT)

August 2007

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

**30 South Pearl Street**
**Albany, New York 12207**

# AGREEMENT FOR THE SALE OF HYDROELECTRIC POWER AND ENERGY TO THE NIAGARA PROJECT HOST COMMUNITIES

## SERVICE TARIFF No. HC-1 – Firm Hydroelectric Power and Energy

## (LEWISTON-PORTER CENTRAL SCHOOL DISTRICT)

Lewiston-Porter Central School District ("Customer") hereby enters into this Agreement with the Power Authority of the State of New York for electric service as follows:

## I. Definitions

a. **Acceptance of the New License** shall mean the date upon which the Power Authority files its acceptance of the New License with FERC, or the date of the expiration of the existing original license, August 31, 2007, whichever occurs later.

b. **Agreement** means this Agreement.

c. **Allocation** shall mean the amount of power and associated energy that the Authority has allocated to Customer hereunder.

d. **Ancillary Services** shall be as defined by the NYISO in its rules, tariffs, manuals and procedures.

e. **Authority** is the Power Authority of the State of New York.

f. **Authorized Recipient** is defined in Article II.

g. **Commencement Date** shall be as set forth in Article XVII.

h. **Contract Demand** will be the amounts set forth in Section II or such other amount as may be determined in accordance with the provisions of this Agreement.

i. **Customer** is the municipality (Host Community) identified above.

j. **Customer's Agent** is defined in Article IX.

k. **Electric Service** is Power and Energy available to Customer in accordance with applicable Service Tariffs, Rules and other contract documents.

l. **Excess Power** is defined in Article VIII and Appendix A.

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

n. **FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which new license will become effective after expiration of the Project's original license issued on January 30, 1958.

o. **Firm Hydroelectric Power and Energy** are firm power and associated energy from the Authority's Niagara Power Project, intended to be available at all times except for limitations provided in this Agreement, the Rules, applicable Service Tariff or in other contract documents.

p. **Green Attributes** (sometimes referred to as Renewable Attributes or Renewable Energy Credits) are attributes associated with renewable energy power production facilities as may be defined by law or administrative action now or in the future, including but not limited to the Renewable Portfolio Standard proceeding of the New York Public Service Commission.

q. **Host Communities** are Niagara County, City of Niagara Falls, Town of Lewiston, Town of Niagara, City of Niagara Falls School District, Lewiston-Porter School District and Niagara-Wheatfield School District.

r. **Load Serving Entity** is an entity authorized or required by law, regulatory authorization or requirement, agreement, or contractual obligation to supply Energy, Capacity and/or Ancillary Services to retail customers under the rules, tariffs, manuals and procedures of the NYISO.

s. **NRA** means the federal Niagara Redevelopment Act (18 USC §§ 836, 836a).

t. **NYISO** means the New York Independent System Operator or any successor organization.

u. **Power Credits** are defined in Article VIII and Appendix A.

v. **Project** means the Niagara Power Project, FERC Project 2216.

w. **Project Power and Energy** means Firm Hydroelectric Power and Energy produced by the Project.

x. **Project Switchyard** is the Niagara Project switchyard.

y. **Relicensing Settlement Agreement** means the Niagara Power Project, FERC Project No. 2216 Host Community Relicensing Settlement Agreement Addressing Non-License Terms and Conditions allocation of Niagara Project Power and Energy to the Host Communities dated June 27, 2005.

z. **Rules** are the applicable provisions of the Authority's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York).

aa. **Service Tariffs** are schedules establishing rates and other conditions for sale of Electric Services to Customer.

bb. **Ultimate Users** are entities to whom Customer or Customer's Authorized Recipient will resell (or otherwise convey benefits associated with) Project Power and Energy purchased from the Authority as provided in Article VI of this Agreement and Appendix A hereto. Customer may designate itself as an Ultimate User.

cc. **Unforced Capacity** is the capacity required to be provided by Load Serving Entities to serve load as defined by the NYISO in its rules, tariffs, manuals and procedures.

All other terms not otherwise defined herein shall have the meanings ascribed to them in the electric industry.

## II. Electric Service to be Provided

a. The Authority shall provide Electric Service pursuant to Service Tariff HC-1 for Power and/or Energy to enable the Customer or the Customer's Authorized Recipient, as defined below, to receive the Allocation from the Project in accordance with the provisions of the FERC License and Relicensing Settlement Agreement, in the amount set forth below:

Firm Hydroelectric Power and Energy Service pursuant to Service Tariff No. HC-1: 1,500 KiloWatts (Contract Demand)

Upon execution of this Agreement by a Host Community, other than Customer, that is legally capable of receiving an Allocation from the Project (Authorized Recipient) such Authorized Recipient shall be authorized to receive the Allocation of the Customer in accordance with the terms and conditions set forth in this Agreement, including Appendix A hereof. Such authorization may be revoked by Customer upon reasonable notice to the Authority and Customer's Authorized Recipient; provided, however, that Customer shall, as of the effective date of such revocation, have made arrangements (a) with another Authorized Recipient to receive the Customer's Allocation, or (b) to receive such Allocation itself, if legally capable of doing so.

The Authority shall provide Unforced Capacity in amounts necessary to meet Customer's NYISO Unforced Capacity obligations associated with the foregoing Allocation in accordance with the rules and tariffs of the NYISO. Neither Ancillary Services, nor Green Attributes are included in such allocation.

**b.** The Contract Demands for Project Power and Energy may be modified by the Authority if the amounts of such Project Power and Energy available for sale from the Project are modified as required to comply with any ruling, order or decision of any regulatory or judicial body having jurisdiction. The Authority shall provide reasonable notice to Customer of any such proposed action that could result in modification of Contract Demands and nothing herein shall be construed as limiting customer's rights to challenge any proposed reduction in Contract Demands.

## III. Rules, Regulations and Service Tariffs

The Rules and Service Tariff No. HC-1, as now in effect and/or such superseding tariffs or other tariffs as the Authority may later promulgate, all as such Rules and Service Tariffs may be later amended from time to time by the Authority, are hereby incorporated into this Agreement with the same force and effect as if herein set forth at length. In the event of any inconsistencies, conflicts or differences between the provisions of the Service Tariffs and the Rules, the provisions of the Service Tariffs shall govern. In the event of any inconsistencies, conflicts or differences between Articles I through XVII of this Agreement and the Service Tariffs, the provisions of Articles I through XVII of this Agreement shall govern. The Authority shall provide at least thirty (30) days prior written notice to Customer of any proposed change in the above Rules and Service Tariffs, but in no event shall Authority provide less notice than that provided to similarly affected customers within New York State if that period of minimum notice is greater than herein referenced. Except as expressly provided otherwise herein, nothing contained in this Agreement shall be construed as restricting Customer's rights to participate in processes involving changes to rates, Rules and Service Tariffs or other matters affecting the subject of this Agreement.

## IV. Transmission and Delivery of Power and Energy

Authority shall make Project Power and Energy available to Customer, Customer's Authorized Recipient or Customer's Agent at the Project Switchyard. It is the Customer's responsibility to act as the Load Serving Entity ("LSE"), arrange for one or more other entities to do so on its behalf or make other arrangements for conveying the benefits associated with the allocation to Ultimate Users. Customer, or the entity acting as LSE, Customer's Authorized Recipient, or Customer's Agent shall arrange for the transmission of the Project Power and Energy supplied hereunder from the Project Switchyard to Customer's points of delivery or the conversion of the Allocation into financial settlements and benefits by such other method of disposition consistent with

Article VI of this Agreement and Appendix A hereto. Such delivery shall be consistent with the terms of the Open Access Transmission Tariff (OATT) or other applicable tariff of the NYISO and Customer shall be responsible for all costs associated with the transmission and delivery of the allocation.

## V. Rates

Project Power and Energy shall be sold to Customer or to Customer's Authorized Recipient hereunder at cost-based rates equivalent to rates charged to in-state preference customers receiving preference power under the NRA.

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

(i) The principles set forth in the March 5, 1986 Settlement Agreement (settling *Auer v. Dyson*, No. 81-124 (Sup. Ct. Oswego Co.), *Auer v. Power Authority*, Index No. 11999-84 (Sup. Ct. N.Y. Co.) and *Delaware County Electric Cooperative, Inc. v. Power Authority*, 82 Civ. 7256 (S.D.N.Y.) (the "*Auer* Settlement").

(ii) Recovery of capital costs using Trended Original Cost and Original Cost methodologies.

(iii) Treatment of sales to third parties, including the New York Independent System Operator.

(iv) Allocation of Indirect Overheads.

(v) Melding of costs of the Niagara Power Project and St. Lawrence-FDR Power Project for ratemaking.

(vi) Post-employment benefits other than pensions (*i.e.*, retiree health benefits).

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

In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Customer or the Customer's Authorized Recipient shall have the right to take any position whatsoever with respect to

[1] These methodologies and principles were employed in and explained by the Authority's January 2003 Report on Hydroelectric Production Rates and the Staff Analysis of Public Comments and Recommendations adopted by the Authority's Trustees on April 29, 2003.

such methodology or principle, but shall not have the right to challenge any of the remaining methodologies and principles that continue to be employed by the Authority. Nothing contained herein shall preclude Customer or the Customer's Authorized Recipient from participating in the rate setting process and raising issues as to whether such methodologies and principles have been correctly employed.

## VI. Use and Resale of Project Power and Energy

Customer or the Customer's Authorized Recipient shall use the Allocation for Customer's facilities or as otherwise allowed in accordance with the Relicensing Settlement Agreement, this Agreement and Appendix A hereof.

In reselling and/or distributing the Allocation, except as otherwise provided in Appendix A hereof, Customer or the Customer's Authorized Recipient shall: 1) do so pursuant to the appropriate laws of the State of New York, 2) distribute such Allocation only to the Ultimate Users designated pursuant to Appendix A, 3) not permit such Ultimate Users to sell any of such Allocation for resale and 4) comply with the provisions of the NRA, the FERC License and the New York Power Authority Act (N.Y. Pub. Auth. Law Section 1000 et seq.), to the extent such Power Authority Act is not inconsistent with the FERC License.

Customer, Customer's Authorized Recipient or Customer's Agent shall keep its books, accounts and records pertaining to the purchase, delivery and sale of the Allocation according to procedures reasonably deemed necessary by Authority to ensure compliance with this Agreement and Appendix A hereof, applicable statutes, licenses, the Rules. Customer or Customer's Authorized Recipient shall provide such information and permit such inspection of its books and records as Authority may reasonably request and shall require Customer's Ultimate Users as identified in Appendix A of the Agreement to agree to do likewise.

The distribution of the benefits of the Allocation to Ultimate Users shall, where feasible, be accompanied by a statement indicating the total savings in dollars realized by the individual Ultimate User for the particular billing period as a result of the purchase of hydroelectric power and energy by Customer or Customer's Authorized Recipient from the Authority. The form and content of such statement shall be coordinated between Customer or Customer's Authorized Recipient and Authority.

## VII. Permanent Reallocation of Project Power and Energy

If Customer is, or becomes unable or chooses not to receive, or to have Customer's Authorized Recipient not receive, any or all of the Project Power and Energy allocated to it on a permanent basis, such Project Power and Energy shall be reallocated by the Authority pro-rata among the other Host Communities. Customer shall provide written notice to the Authority and the other Host Communities of such inability or election within 30 days of its becoming aware of

such inability or election. Upon receipt of such notice by the Authority, any required changes in the allocations of Project Power and Energy among the other Host Communities shall become effective as soon as practicable, without need to amend this Agreement and the Contract Demand in this Agreement shall be revised to reflect such reallocation, notwithstanding Article XIV hereof.

## VIII. Availability of Energy

Subject to any other limitations set forth in the Rules or the Service Tariff (including low-flow conditions), if Customer or Customer's Authorized Recipient directly or indirectly provides the Allocation to Ultimate Users for physical delivery to such Users' accounts as set forth in Appendix A, Authority will supply Customer's (or Ultimate Users', as the case may be) entire demand and energy usage up to the Contract Demand. If there is any portion of the energy associated with the Allocation made available to Customer or Customer's Authorized Recipient (at a monthly load factor of seventy percent (70%) pursuant to the Authority's regular scheduling requirements) that is not required to serve such Ultimate Users' facilities, such energy may be utilized as Excess Power in the manner described in Appendix A.

As between Customer and the Authority, for any usage above the Contract Demand, it is Customer's responsibility to arrange for provision of such excess service by a third party supplier, and the apportionment of energy between suppliers shall be as set forth in Service Tariff No. HC-1, or any successor tariff.

Subject to any other limitations set forth in the Rules or Service Tariff (including low-flow conditions), if Customer or Customer's Authorized Recipient provides the benefits of the Allocation to Ultimate Users in the form of Power Credits as set forth in Appendix A, the Allocation will be delivered at a monthly load factor of seventy percent (70%) pursuant to the Authority's regular scheduling requirements.

## IX. Appointment of Customer's Agent

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

business process requirements), designate a different party as Customer's Agent at any time during the term of this Agreement.

Customer's Agent may include, without limitation, a public utility, LSE, Municipal Distribution Agency, load aggregator or other entity authorized to purchase and sell electric power and/or energy pursuant to Section 360 of the General Municipal Law or pursuant to other authority.

## X. Term and Termination of Service

Service under the Agreement shall begin on the Commencement Date and shall continue until the earliest of (a) termination by Customer with respect to all of its Allocation upon ninety (90) days prior written notice, (b) termination by the Authority pursuant to the Rules upon required notice, or (c) September 1, 2025, at which time a new or modified agreement will be entered between the Authority and the Customer to provide Customer or Customer's Authorized Recipient with Project Power and Energy for the remainder of the licensing period in the amount and for the rate then in effect which complies with the terms of the Relicensing Settlement Agreement. If such a new or modified agreement is not in place to take effect after September 1, 2025, service will be continued under the terms and conditions of this Agreement on a year to year basis or until a new or modified agreement takes effect between the parties.

The Authority may cancel service hereunder or modify the quantities of Project Power and Energy allocated to Customer only (a) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency), or (b) as otherwise provided herein or in the Rules. Notwithstanding the foregoing, upon mutual agreement this Agreement may be extended beyond such date on a month to month basis pending execution of any successor agreement between the Customer and Authority. The Authority shall provide reasonable notice to Customer of any matter or proceeding that could result in an order or decision as described in part (a) of this paragraph and nothing herein shall be construed as limiting Customer's right to challenge any such proposed action.

Nothing herein is intended to limit the rights of the Host Communities or Customer under the Relicensing Settlement Agreement and the Authority and Customer understand and agree that the Authority is obligated under such Relicensing Settlement Agreement to make a total of 1,500 KiloWatts of Project Power and Energy available to Customer or Customer's Authorized Recipient for the term of the FERC License, whether through extension of this Agreement or by subsequent agreement.

## XI. Notification

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

To: Authority

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

To: Customer

Lewiston-Porter Central School District
4061 Creek Road
Youngstown, NY 14174

Attention: President, Board of Education

With a copy to:

Lewiston-Porter Central School District
4061 Creek Road
Youngstown, NY 14174

Attention: Superintendent of Buildings and Grounds

To: Customer's Authorized Recipient

Niagara County
175 Hawley St.
Lockport, New York 14094

Attention: Clyde L. Burmaster, Chairman, Niagara County Legislature

With a copy to:

Kevin O'Brien, P.E., Commissioner of Public Works
Niagara County
Niagara County Department of Public Works
59 Park Avenue
Lockport, New York 14094

## XII. Applicable Law and Venue

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. Any action or proceeding arising out of or relating to this Agreement shall be brought in state courts located in Albany County, New York.

## XIII. Successors and Assigns

This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of the parties hereto; provided, however, that no assignment by a party or any successor or assignee of such party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other parties in each case obtained, which consent shall not be unreasonably withheld.

## XIV. Previous Agreements and Communications

This Agreement, together with the Relicensing Settlement Agreement, shall constitute the sole and complete agreement of the parties hereto with respect to the matters herein set forth, and such Agreements supersede all previous communications between the Parties hereto, either oral or written, with reference to the subject matter hereof; provided, however, that additional terms pursuant to which Customer's Authorized Recipient is authorized to receive Customer's Allocation may be set forth in a separate agreement between Customer and Authorized Recipient. Any such separate agreement shall not be inconsistent with the terms of this Agreement and shall be provided to the Authority for informational purposes.

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

If there is a conflict between the language in Section 6 of the Relicensing Settlement Agreement entitled "Power Allocation" and language in this Agreement, including Appendix A, the language of this Agreement addressing this subject shall control.

## XV. Acceptance and Approvals

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

## XVI. Severability and Voidability

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

In such an event and at the request of any of the parties, the parties agree to engage in good faith negotiations on possible modification to this Agreement to remedy any portion of this Agreement that was declared invalid, unlawful or ineffective. Such good faith negotiations shall conform to the requirements comparable to those of section 10.1.3 of the Relicensing Settlement Agreement. To the extent that good faith negotiations do not result in an agreement as to whether or how this Agreement should be modified, the parties agree to resolve their differences in accordance with the alternative dispute resolution mechanism set forth in section 12 of the Relicensing Settlement Agreement. The primary goal of any good faith negotiation or alternative dispute resolution mechanism shall be to preserve to the greatest extent as possible, the benefit of the parties' intended bargain.

## XVII. Effectiveness of Agreement

This Agreement shall take effect on the later of: (i) the acceptance of the new License or (ii) the date of this Agreement's execution under Article XV above.

**CUSTOMER:** LEWISTON-PORTER CENTRAL SCHOOL DISTRICT

BY Robert L Lane

Title PRESIDENT - BOE

Date Aug 27, 2007

(Seal)

Attest by: Warren Kahn, School District Attorney

**AUTHORIZED RECIPIENT:** NIAGARA COUNTY, NEW YORK

BY

Title CHAIRMAN, NIAGARA COUNTY LEGISLATURE

Date AUGUST 24 2007

(Seal)

Attest by:

Accepted:

APPROVED
NIAGARA COUNTY ATTORNEY
BY
ED-8-25-07

JAMES B. SOBCZYK
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN NIAGARA COUNTY
My Commission Expires May 9, 2009

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

BY

Title Frank S. McCullough, Jr., Chairman

Date September 5, 2007

(Seal)

Attest by:

Anne B. Cahill, Corporate Secretary

ACKNOWLEDGEMENTS

STATE OF NEW YORK )
) SS:.
COUNTY OF WESTCHESTER )

On this 5th day of September, 2007, before me personally came Frank S. McCullough, Jr. and Anne B. Cahill, to me known, who each being by me duly sworn, did severally depose and say that they reside in Rye, N.Y. and White Plains, N.Y., and that they are, respectively, Chairman and Corporate Secretary of Power Authority of the State of New York, a corporation described in and which executed the above instrument; that they know the seal of Power Authority of the State of New York aforesaid; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the Trustees of Power Authority of the State of New York, and that they signed their names thereto by like order.

Lorna Johnson

LORNA JOHNSON
NOTARY PUBLIC, State of New York
No. 01JO4961652
Qualified in Queens County
Commission Expires Feb. 5, 2010

## Appendix A

Except as Customer determines otherwise, consistent with the terms of this Agreement, Customer or Customer's Authorized Recipient will initially distribute power and energy purchased from the New York Power Authority under the Agreement or the economic benefit of such power and energy to the following Ultimate Users_____

Customer may add to or delete from the above list of Ultimate Users on thirty (30) day's notice to the Authority. Customer in its sole determination may elect to use its full Allocation or any part thereof, for economic development. The economic development program description, allocation criteria and methodology shall be submitted to and approved by the Authority which approval shall not be unreasonably withheld.

The benefits of the Allocation shall be provided to such Ultimate Users either by direct sale or by allocation by the Customer (or by Customer's Authorized Recipient or Customer's Agent) of electricity or the provision of financial settlements and benefits, as set forth below, or through different methods approved by the Authority. Customer shall have the right to recover as Customer Costs its direct administrative and services costs, reasonable compensation for use of third party facilities and services furnished to Customer in the transmission and distribution of such power, all costs associated with negotiating the Agreement and the establishment of mechanisms to accept and distribute the Allocation, and any similar costs, incurred after the execution of the Host Community Relicensing Settlement Agreement dated June 27, 2005. Such Customer Costs shall be reimbursed to Customer or otherwise paid by the Ultimate User by procedures to be determined.

The listing or description of the foregoing Ultimate Users in no way mandates or requires for any reason that the Customer provide any portion of the Allocation (or Power Credits) to an Ultimate User and shall not preclude the Customer from denying any such Ultimate User the benefits associated with an allocation for any reason as determined by Customer.

### A Direct Sale / Allocation, Use of Excess Power

Customer, Customer's Authorized Recipient or Customer's Agent may make a portion of the Allocation available to an Ultimate User for delivery at such Ultimate User's electricity accounts under the tariffs, rules and regulations of the NYISO and the utility in whose service area such accounts are located. If there is any portion of the Allocation made available to Customer or Customer's Authorized Recipient that is not required to serve such Ultimate User's facilities, such Excess Power (up to the load factor specified in the Agreement) may be utilized as follows:

1. Customer, Customer's Authorized Recipient or Customer's Agent may schedule Excess Power into the NYISO administered market for financial settlement, and such financial settlement so received by Customer (less Customer's Costs as set forth above and the cost of the power and energy purchased from the Authority), shall be applied by Customer to payment of Customer's (or an Ultimate User's, as the case may be) energy-related costs, including but not limited to, the purchase of energy commodities, the delivery and transportation of electricity and all other energy commodities

and/or for energy efficiency or clean energy technology programs or projects now in existence or that may exist during the term of the Agreement.

2. Customer or Customer's Authorized Recipient may use the Excess Power (or the benefits associated with such Excess Power derived from a financial settlement as set forth in the preceding Paragraph 1) for economic development by providing credits to a business to apply against the cost of power or energy and/or the cost of delivery of power or energy consumed by such business.

## B Power Credits

Customer, Customer's Authorized Recipient or Customer's Agent, may schedule all of Customer's Allocation (up to the load factor specified in the Agreement) into the NYISO administered market for financial settlement, and such financial settlement so received by Customer (less Customer's Costs as set forth above and the cost of the power and energy purchased from the Authority), may be provided to Ultimate Users in the form of Power Credits by Customer or Customer's Authorized Recipient as follows:

Power Credits may be applied towards the cost and/or delivery of electric power or energy consumed by the Ultimate User or for other energy-related costs, including but not limited to, purchase of energy commodities, the delivery and transportation of electricity and all other energy commodities and/or for energy efficiency or clean energy technology programs or projects now in existence or that may exist during the terms of the Agreement.

## C Service through Authorized Entity

Through assignment, transfer or otherwise, including through an agency arrangement, Customer shall have the right to make available its Allocation or any part thereof to any entity, including but not limited to Customer's Authorized Recipient, that is duly authorized to receive, purchase, transmit, distribute, and/or resell the power and energy included in the Allocation or otherwise to engage in such transactions as are necessary to effectuate the delivery of the Allocation and/or to provide the financial benefits thereof to the Customer, the Customer's Ultimate Users and the Customer's constituents, as determined in the exercise of the Customer's discretion and consistent with the provisions of the Host Community Relicensing Settlement Agreement dated June 27, 2005 and Article VI of the Agreement. Any such assignment, transfer, agency arrangement or similar transaction contemplated by this paragraph may, but shall not be required to, include elements of the other methods described in this Appendix A.

## D Continuity

In the event that any administrative agency or court of competent jurisdiction shall determine that any element of any of the foregoing methods of distributing the Allocations and/or financial benefits thereof is unauthorized or illegal, the Customer shall propose an alternative method of distribution, not necessarily limited to those described above, and

the Authority shall promptly determine whether to accept such alternative method. Such acceptance shall not be unreasonably withheld.

## E Right to Alternate Between Methods

Customer shall have the right at its discretion and without restriction to alternate between the methods for the distribution of the benefits of the Allocation as set forth in Sections A through D above, upon giving sixty (60) days written notice to the Authority.

## F. Market Administration

Notwithstanding anything to the contrary in the Agreement, if Customer and/or Customer's Authorized Recipient elects to convert the Allocation into financial settlements for use as payments or credits pursuant to Sections A or B above, the Authority may in its discretion schedule the Allocation into the NYISO administered market for financial settlement; such financial settlement, less the Authority's costs calculated using tariff rates as described in Section V of the Agreement, shall be provided to Customer, Customer's Authorized Recipient, or Customer's Agent, as the case may be, for disposition pursuant to the terms of a separate agreement between Authority, Customer and either Customer's Agent or Customer's Authorized Recipient, or both.

In the event that the Authority determines, in its discretion, not to use the foregoing method of scheduling the Allocation into the NYISO administered market for financial settlement, the Authority will provide reasonable notice to Customer of its intent to discontinue such method and assist Customer in making other arrangements to effect the delivery of the benefits of the Allocation to Customer or Ultimate Users.

This Section F is intended as an additional method of providing the benefits of the Allocation and is not intended to limit in any way the right to use other methods of providing such benefits, as set forth in the Agreement, including this Appendix A.

## Appendix B

## NEW YORK POWER AUTHORITY RATE STABILIZATION RESERVE METHODOLOGY

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

1. Calculate the total cost of service (CoS) for the Niagara/St. Lawrence projects. Costs include: Operations and Maintenance, amortized roadwork, Indirect Overheads (Shared Services, Research and Development, debt service) and Capital Costs (using TOC for equity funded and OC for debt funded).

2. Credit the CoS by any excess capacity (ICAP) sales to the NYISO.

3. Allocate costs to the demand function by multiplying the sum of the customers' billed demands by the preference demand charge, which has been inflated to include Ancillary Services production costs. This larger demand charge is used only for the purposes of the RSR.

4. Calculate the cost-based energy rate by dividing the remaining energy assigned costs by the annual metered generation.

5. Calculate the difference between the cost-based energy rate and the billed preference energy rate.

6. Multiply the difference in the rates by the actual annual billed preference energy sales to determine the annual change in the RSR.

7. Add the annual change to the RSR balance from the prior year-end to get the current year-end RSR balance.

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

POWER AUTHORITY OF THE STATE OF NEW YORK

30 South Pearl Street, Albany, NY 12207

Service Tariff No. HC -1

Schedule of Rates for Firm Hydroelectric Power
and Energy Service

EFFECTIVE:

September 1, 2007

APPLICABLE:

To sale of Niagara Firm Hydroelectric Project Power and Energy to the Host Communities customers and/or their Authorized Recipients eligible for cost-based service under the Niagara Relicensing Settlement Agreement.

CHARACTER OF SERVICE:

Alternating current, 60 hertz, three-phase.

RATES:

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

| Period | Demand Rate $/kW-month |
|---|---|
| 9/1/2007 through 4/30/2008 | 2.65 |
| 5/1/2008 through 4/30/2009 | 2.96 |

Base Energy Rate: 4.92 mills per kilowatt-hour

The Base Energy Rate set forth herein shall be subject to a monthly adjustment in accordance with a flow adjustment computation (FAC) as described in Appendix B.

MINIMUM MONTHLY CHARGE:

The product of the Capacity Rate and the Billing Demand.

POWER FACTOR:

Not less than 95% lagging or leading, except as otherwise specified in the Agreement.

DEFINITIONS:

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

Billing Energy: Energy provided by Authority under this service tariff.

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

GENERAL PROVISIONS:

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

A Availability of Energy

Unless otherwise agreed upon by the Parties, Authority shall normally provide in any Billing Period firm Energy to Customer and/or Customer's Authorized Recipient in an amount equal to the product of (A) the number of hours in such Billing Period, (B) the Contract Demand applicable in such Billing Period and (C) the load factor specified in the Agreement. The Authority will have the right to reduce on a pro rata basis the amount of energy provided to Customer and/or Customer's Authorized Recipient if such reductions are necessary due to low flow (i.e., hydrologic) conditions at the Authority's Niagara and St. Lawrence-FDR hydroelectric generating stations. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to Customer and/or Customer's Authorized Recipient in later billing periods. The offer of Energy for delivery shall fulfill Authority's obligations for purposes of this Provision whether or not the Energy is taken by Customer and/or Customer's Authorized Recipient. The Authority shall provide reasonable notice to Customer and Customer's Authorized Recipient of any condition or activities that could result, or have resulted, in low flow conditions consistent with the notice provided to other similarly affected customers.

Unless otherwise specified in the Agreement, where Customer is taking service solely from Authority, the Billing Energy shall be the total number of kilowatt-hours recorded on Customer's and/or Customer's Authorized Recipient's meter (or the meters of entities served by Customer and/or Customer's Authorized Recipient as indicated in the Agreement) during the Billing Period, adjusted for losses.

Unless otherwise specified in the Agreement, where Customer and/or Customer's Authorized Recipient takes service from other sources in addition to service supplied hereunder, the Billing Energy shall be determined by multiplying (A) the number of hours in such Billing Period, (B) the Contract Demand applicable in such Billing Period and (C) the load factor specified in the Agreement.

B Adjustment of Rates

To the extent not inconsistent with the attached Agreement, the rates contained in this Service Tariff HC-1 may be revised from time to time on not less than thirty (30) days written notice to Customer.

C Delivery

For the purpose of this Service Tariff HC -1, Power and/or Energy shall be delivered by Authority at the Project Switchyard to the transmission facilities under the control of the NYISO for delivery to Customer and/or Customer's Authorized Recipient.

For the purpose of these Service Tariffs, Power and/or Energy shall be deemed to be offered when Authority is able to supply Power and Energy and NYISO transmits it to Customer and/or Customer's Authorized Recipient or its designated points of interconnection with Customer's Delivering Agent at the Niagara Project Switchyard. The offer of Energy for delivery shall fulfill Authority's obligations for purposes of this Provision whether or not the Energy is taken by Customer and/or Customer's Authorized Recipient. If, despite such offer, there is a failure of delivery by Customer, Customer's Authorized Recipient, or Customer's Agent, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

D Scheduling Procedures

1. Authority will advise Customer, and Customer's Authorized Recipient, or Customer's Agent by the tenth ($10^{th}$) Business Day of the preceding month of the estimated quantity of Energy expected by Service Tariff to be made available from the Project.

2. Authority may require that such Energy from the Project be scheduled in general accordance with the load shape of Customer, Customer's Authorized Recipient, or Customer's Agent or as otherwise agreed upon by the Customer and Authority.

3. Customer, Customer's Authorized Recipient, or Customer's Agent shall file with Authority pursuant to procedures established by Authority, a daily schedule setting forth the Customer's and/or Customer's Authorized Recipient's requested amounts from the Project on a clock hour basis.

4. Subsequent to Authority approval of schedules for any day, Authority and Customer, Customer's Authorized Recipient, or Customer's Agent may agree on changes in such schedules subject to NYISO scheduling requirements and procedures Authority shall establish such that an efficient dispatch of Authority facilities will be accomplished.

E Payment by Customer and/or Customer's Authorized Recipient for Power and/or Energy

1. Customer and/or Customer's Authorized Recipient shall pay for Power and/or Energy during any Billing Period the sum of a) and b) below:

   a. For Firm Hydroelectric Power and Energy the capacity rate per kilowatt specified in this Service Tariff or any modification thereof applied to Customer's Billing Demand for the Billing Period: and

   b. The Energy rate specified in this Service Tariff or any modification thereof applied to the amount of firm Billing Energy delivered by Authority to Customer and/or Customer's Authorized Recipient during such Billing Period.

2. Bills computed under Service Tariff HC-1 are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by Authority. In the event that there is a dispute on any items of a bill rendered by Authority, Customer shall pay such bill and adjustments, if necessary, will be made thereafter.

F Supplementary Provision

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

G Alternate Arrangements

Notwithstanding general provisions C, D and E above, Authority, Customer, Customer's Authorized Recipient and/or Customer's Agent may make alternate arrangements regarding Delivery, Scheduling Procedures and Payment by Customer for Power and/or Energy, necessary to effectuate the terms of Appendix A hereto.