

---

POWER AUTHORITY OF THE STATE OF NEW YORK

30 South Pearl Street  
Albany, New York 12207

AGREEMENT GOVERNING THE SALE  
OF ST. LAWRENCE-FDR PROJECT POWER AND ENERGY  
TO THE TOWN OF MASSENA ELECTRIC DEPARTMENT FOR ECONOMIC  
DEVELOPMENT PURPOSES

Service Tariff No. SC-1 – St. Lawrence County Economic Development Power

---

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title 1 of Article 5 of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10<sup>th</sup> Floor, Albany, New York 12207-3425, hereby enters into this agreement for the Sale of St. Lawrence-FDR Project Power and Energy (“Agreement”) with the Town of Massena Electric Department (“Customer”) with offices at 71 E. Hatfield Street, Massena, New York 13662. The Authority and the Customer are from time to time referred to in this Agreement as “Party” and collectively as “Parties” and agree follows:

## RECITALS

WHEREAS, the Authority is authorized to enter into contracts with municipalities of the State of New York (“State”) for the use, sale, transmission and distribution of the power generated by the Authority’s hydroelectric projects, including the St. Lawrence-FDR Power Project (“Project”), Federal Energy Regulatory Commission Project No. 2000, in accordance with PAL § 1005(5);

WHEREAS, PAL § 1005(5) further provides that the Authority is authorized to use other methods which it may find advantageous to give effect to the policies articulated in such provision;

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

WHEREAS, the Customer is an electric utility owned and operated by the Town of Massena and is authorized to engage in the distribution of electric power and provide public utility services pursuant Article 14-A of the General Municipal Law;

WHEREAS, the Customer is desirous of purchasing hydroelectric power from the Authority for the purpose of reselling such hydropower to business customers for economic development purposes pursuant to an economic development plan;

WHEREAS, a proposed contract previously negotiated by the Parties that would have provided for the sale of hydropower to the Customer, and for the monetization of a portion of such hydropower by the Authority for economic development purposes, through an agreement entitled “Agreement Regarding Funding of the St. Lawrence River Valley Development Agency,” dated June 2, 2010 (“Funding Agreement”), was disapproved by the Governor of the State of New York pursuant to PAL § 1009, on the grounds that, among other things, the Authority lacked legal authority to monetize such power and make the proceeds available for such purposes;

WHEREAS, the Authority’s Board of Trustees (“Trustees”) has authorized a program pursuant to which the Authority may allocate and sell up to twenty (20) megawatts (“MW”) of project hydropower known as “St. Lawrence County Economic Development Power” to the

Customer for sub-allocation and resale by the Customer to qualified business customers for economic development purposes;

WHEREAS, this Agreement is intended to implement such program and does not provide for monetization of power by any Party for the purposes specified in the Funding Agreement; 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

“Agreement” means this Agreement.

“Allocation” means a specific allocation of SCEDP to the Customer made pursuant to this Agreement for the purpose of enabling the Customer to make a Sub-Allocation of such SCEDP to a specific Qualified End User in accordance with this Agreement. For avoidance of doubt, the Parties agree and acknowledge that neither Ancillary Services nor Green Attributes are included in an Allocation.

“Ancillary Services” means Ancillary Services as defined by the NYISO in its rules, tariffs, manuals and procedures.

“Application” means an application by a Qualified Applicant for a Sub-Allocation.

“Authority” means the Power Authority of the State of New York, as described in the preamble to this Agreement.

“Confidential Information” means information that is protected from disclosure pursuant to Public Officers Law § 87(2).

“Contract Demand” means the sum of individual contract demands, inclusive of losses, for SCEDP as provided for in individual Sub-Allocation Contracts between the Customer and Qualified End Users, not to exceed the Maximum Total Allocation Amount.

“Customer” means the Town of Massena Electric Department, as described in the preamble to this Agreement.

“Customer Agent” has the meaning provided in Article XII of this Agreement.

“Customer’s Costs” means reasonable costs incurred by the Customer relating to the administration and performance of this Agreement and the transactions contemplated hereunder, including: (1) the Customer’s internal direct costs, including overhead; (2) reasonable costs incurred for services procured by the Customer, including the services of any Customer Agent;

(3) costs incurred for the use of third-party facilities and services furnished to the Customer in connection with the transmission and distribution of the Sub-Allocations; and (4) costs incurred for the establishment of mechanisms to accept and distribute Sub-Allocations.

“Economic Development Plan” means the Economic Development Plan attached to this Agreement as Exhibit 1.

“Electric Service” means Firm Hydroelectric Power and Energy associated with Allocations and sold by the Authority to the Customer in accordance with this Agreement, the Service Tariff and the Rules. |

“Effective Date” means the date this Agreement is fully executed by the Parties.

“FERC” means the Federal Energy Regulatory Commission (or any successor agency).

“FERC License” means the 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 November 1, 2003 after expiration of the Project’s original license issued in 1953.

“Firm Hydroelectric Power and Energy” means firm power and associated energy from the Project, intended to be available at all times except for limitations provided for in this Agreement, the Service Tariff and the Rules.

“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.

“Hydroelectric Resources” means hydroelectricity, including SCEDP, and/or revenues produced from the sale of such hydroelectricity.

“IDA” means the St. Lawrence County Industrial Development Agency Local Development Corporation, a non-party to this Agreement.

“Load Serving Entity” or “LSE” means 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.

“Maximum Total Allocation Amount” means twenty (20) MW, which shall be inclusive of distribution losses.

“NYISO” means the New York Independent System Operator, Inc., or any successor organization.

“NYISO Rules” means the NYISO Open Access Transmission Tariff (“OATT”), the NYISO Market Services Tariff and all NYISO manuals, rules, procedures, agreements or other documents relating to, among other things, the operation of the transmission system in the NYISO control area, reliability, and the purchase and sale of products and the participation of market participants in the NYISO markets, as in effect from time to time.

“Project” means the St. Lawrence-FDR Power Project, FERC Project 2000.

“Project Switchyard” means the St. Lawrence Project switchyard.

“Rules” means the applicable provisions of Authority’s rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority in its discretion.

“RVRDA” means the St. Lawrence River Valley Redevelopment Agency, a non-party to this Agreement.

“Service Tariff” means the Authority’s Service Tariff No. SC-1, as may be modified or superseded from time to time by the Authority in its discretion.

“St. Lawrence County Economic Development Power” or “SCEDP” means Firm Hydroelectric Power and Energy produced by the Project made available for Allocation and sale to the Customer for Sub-Allocation and re-sale by the Customer to Qualified Applicants in accordance with this Agreement in a total amount not to exceed the Maximum Total Allocation Amount.

“Sub-Allocation” means an allocation of SCEDP by the Customer to a Qualified Applicant made in accordance with this Agreement.

“Sub-Allocation Contract” means a written contract for the sale of a Sub-Allocation of SCEDP by the Customer to a Qualified End User, the form of which shall be approved by the Authority.

“Qualified Applicant” means a person who is qualified to apply for and receive a Sub-Allocation of SCEDP in accordance with this Agreement and the Economic Development Plan.

“Qualified End User” means a Qualified Applicant who has received a Sub-Allocation of SCEDP from the Customer in accordance with this Agreement and the Economic Development Plan.

“Unforced Capacity” means the capacity required to be provided to serve load as defined by the NYISO in its rules, tariffs, manuals and procedures.

## II. General Provisions

1. This Agreement shall govern the Allocation and sale of SCEDP to the Customer, and shall specify terms and conditions relating to the Sub-Allocation and re-sale of such SCEDP by the Customer to Qualified End Users.

2. As provided for in this Agreement, the Customer shall be entitled to apply to the Authority for Allocations of SCEDP for the purpose of making and selling Sub-Allocations to Qualified End Users in accordance with this Agreement and consistent with the Economic Development Plan.

3. This Agreement does not mandate or otherwise require: (a) the Authority to make or sell any specific Allocation of SCEDP to the Customer; or (b) the Customer to Sub-Allocate or resell any SCEDP to any specific person except as provided for in the Agreement in the case of an Allocation made to the Customer for a specific Sub-Allocation or when otherwise authorized by this Agreement.

4. Any application for an Allocation by the Customer under this Agreement shall be subject to the availability of SCEDP and any commitments the Authority has made regarding such SCEDP. The Authority will use commercially reasonable efforts to make such SCEDP available within three (3) months of the Authority's approval of a Sub-Allocation made in accordance with the procedures established in this Agreement.

5. The Authority shall retain and be entitled to the exclusive use of all SCEDP that (a) has not been specifically Allocated to the Customer and Sub-Allocated to Qualified End Users, (b) has been relinquished by or withdrawn from the Customer or Qualified End Users in accordance with this Agreement, the Service Tariff, or the Rules, and (c) has been Sub-Allocated but has not been used.

6. The Customer may not sell/resell any SCEDP except for the purpose of making and selling such SCEDP as Sub-Allocations to Qualified Applicants in accordance with this Agreement.

7. This Agreement shall not govern or otherwise affect any power allocated and sold by the Authority to the Customer under any other agreement between the Parties.

8. Nothing in this Agreement affects the Authority's authority pursuant to PAL § 1005(5) to regulate the rates the Customer charges for any hydropower purchased from the Authority under this Agreement.

9. Nothing in this Agreement is intended to authorize or shall be construed as authorizing the Authority to monetize any portion of SCEDP for the benefit of the Customer, RVRDA, IDA, or any Qualified End User, or for any of the purposes identified in the Funding Agreement.

### III. Application Process

1. The Customer shall establish a written process for the solicitation and consideration of Applications for SCEDP that is consistent with the Economic Development Plan and this Agreement. All solicitations for Applications of SCEDP shall be made by the Customer or a Customer Agent through public notice.

2. Applications for SCEDP shall be in the form and contain such information as the Customer prescribes in consultation with the Authority. The Customer shall review each Application and make an initial determination of whether the applicant is a Qualified Applicant. Only Qualified Applicants may be considered for Sub-Allocations of SCEDP.

3. The Customer shall provide a copy of each completed Application to (a) RVRDA, (b) IDA and (c) any state regional economic development council with responsibility for the St. Lawrence County area ("REDC") for the purpose of soliciting comments and recommendations of IDA, RVRDA and the REDC on the Application, including whether or not IDA, RVRDA and the REDC support the Application, provided the Customer first receives the consent of the Qualified Applicant and takes reasonable steps to protect against the disclosure of Confidential Information contained in the Application.

4. In the case of Qualified Applicants, the Customer shall evaluate Applications based on consideration of the criteria contained in the Economic Development Plan. In evaluating Applications, the Customer shall consult with and consider any recommendations made by IDA, RVRDA and the REDC. The Customer shall be entitled to make any of the following recommendations to the Authority regarding Sub-Allocations: (a) approve an Application; (b) deny an Application; (c) approve a smaller Sub-Allocation than requested in an Application; (d) approve a Sub-Allocation (or smaller Sub-Allocation) subject to conditions; or (e) withhold decision on an Application pending the receipt of additional information from the Qualified Applicant. The Customer may choose between Applications based on its determination of which Applications best meet the Economic Development Plan's criteria.

5. The Customer shall submit all Applications for which it recommends a proposed Sub-Allocation to the Authority for the Authority's review and approval provided that such Applications are supported by IDA and RVRDA. Each submittal shall be accompanied by the following information: (a) a copy of the Application; (b) a statement from the Customer demonstrating that the applicant is a Qualified Applicant; (c) the facts and other considerations supporting the proposed Sub-Allocation, including the amount of the capital investment and the number of jobs that would be created by the Applicant in consideration of the recommended Sub-Allocation; (d) a copy of the proposed Sub-Allocation Contract; (e) documentation of the positions of IDA, RVRDA and the REDC on the Application; (f) any other information the Customer believes is relevant to the Application; and (g) any information requested by the Authority. If the REDC has not provided a recommendation on an Application within sixty (60) days of the Customer's request, the Customer may forward the Application to the Authority for consideration notwithstanding the absence of an REDC recommendation at that time.

6. The Authority, in its sole discretion, may: (a) approve a proposed Sub-Allocation; (b) deny a proposed Sub-Allocation; (c) approve a smaller Sub-Allocation than was requested in the

Application or proposed by the Customer; (d) approve a proposed Sub-Allocation (or smaller Sub-Allocation) subject to conditions; or (e) withhold decision on a proposed Sub-Allocation pending the receipt of additional information from the Applicant or the Customer; provided that the Authority shall not unreasonably withhold such decision, and shall use good faith efforts to render a decision pursuant to this Section III.6 within ninety (90) days of its receipt of all required information.

7. Approval of a Sub-Allocation by the Authority shall: (a) authorize the Customer to enter into a Sub-Allocation Contract with a Qualified Applicant for the sale of the Sub-Allocation, subject to the provisions of this Agreement and any conditions imposed by the Authority pursuant to Section III.6; and (b) entitle the Customer to receive a corresponding Allocation from the Authority, subject to the provisions of this Agreement, the Service Tariff and the Rules.

#### IV. Use of SCEDP by the Customer

1. Allocations of SCEDP made to the Customer shall be used by the Customer solely for the purpose of making corresponding Sub-Allocations.

2. All SCEDP allocated and sold to the Customer shall be Sub-Allocated and sold pursuant to a Sub-Allocation Contract between the Customer and the Qualified End User, the form of which shall be subject to approval by the Authority. In addition to other terms and conditions the Parties deem acceptable, Sub-Allocation Contracts shall contain terms providing for the following:

(a) A prohibition against the transfer, reallocation or resale of any portion of SCEDP by the Qualified End User.

(b) A prohibition against the transfer of any portion of the SCEDP to a different facility of the Qualified End User that is not authorized by the Sub-Allocation Contract to receive it without the consent of the Customer and the Authority.

(c) Periodic audits of the Qualified End User by the Customer and the Authority for the purpose of determining Sub-Allocation Contract compliance.

(d) Partial or complete withdrawal of a Sub-Allocation if the Qualified End User fails to maintain agreed-upon commitments, relating to, among other things, employment levels, power utilization and capital investments.

(e) A reduction in the amount of any Sub-Allocation when the amount of a corresponding Allocation is reduced as provided for by this Agreement, the Service Tariff, or the Rules.

(f) A rate for the SCEDP that does not recover from Qualified End Users more than the cost to the Customer of the Allocation, plus the Customer's Costs.

(g) A provision providing that Sub-Allocations is subject to the provisions of this Agreement, the Service Tariff, the Rules, the FERC License, PAL Article 5, Title 1 (to



the extent such statute is not inconsistent with the FERC License), and all other applicable laws and regulations.

(h) Reasonable provisions requiring Qualified End Users to provide periodic statements to the Customer and the Authority, if requested, indicating the total savings in dollars realized by the Qualified End User as a result of the Sub-Allocation received. The Parties agree to work together and cooperate for the purpose of developing the form and content of such statement.

(i) SCEDP shall be used only at the facilities identified in the Sub-Allocation Contract.

3. Sub-Allocations should not exceed seven (7) years in length without good cause shown by the Customer and in any event no Sub-Allocation shall extend beyond the term of this Agreement, provided, subject to these limitations, the Customer may, as part of its Economic Development Plan, establish a process by which Qualified End Users may apply for an extension of their Sub-Allocations prior to expiration of their Sub-Allocation. Applications for extensions of Sub-Allocations shall be subject to process and requirements substantially similar to those applicable to Applications, and all extensions shall be subject to the review and approval of the Authority.

#### V. Electric Service

1. The Authority shall provide Electric Service pursuant to the Service Tariff to enable the Customer to receive Allocations of SCEDP made by the Authority to the Customer under this Agreement in accordance with the provisions of the FERC License.

2. The Authority shall provide Unforced Capacity in amounts necessary to meet the Customer's NYISO Unforced Capacity obligations associated with Allocations of SCEDP made by the Authority to the Customer under this Agreement in accordance with the NYISO's rules, tariffs, manuals and procedures, subject to cost recovery by the Authority through the rates provided for in the Service Tariff.

3. In addition to any other modification provided for in this Agreement, the Service Tariff or the Rules, any Allocation made pursuant to this Agreement may be modified by the Authority if the amounts of SCEDP available for sale from the Project are modified as required to comply with any law, ruling, order or decision of any regulatory or judicial body having jurisdiction to which the Authority is subject. The Authority shall provide reasonable notice to the Customer of any such action that would result in modification of any Allocation.

#### VI. LSE Responsibilities; Transmission and Delivery; Load Splitting

1. The Customer shall have the responsibility to (a) register and serve as the LSE, (b) arrange for one or more other entities to register and serve as the LSE on its behalf, or (c) make other appropriate arrangements, in order to provide for Sub-Allocations of SCEDP to Qualified End Users. The Customer shall be responsible for all costs associated with such

matters subject to cost recovery from Qualified End Users. The Authority shall not have LSE responsibilities for any purpose in connection with any Allocations or Sub-Allocations.

2. The Customer, the Customer's Agent, or another person acting as the LSE on the Customer's behalf, shall have the responsibility to arrange for the transmission and delivery of SCEDP supplied hereunder from the Project Switchyard to points of delivery to the Qualified End Users. Such transmission and delivery shall be consistent with the other provisions of this Agreement, the Service Tariff and the NYISO Rules.

3. As LSE, the Customer shall be responsible for all costs associated with the NYISO and transmission and delivery services, but this Agreement does not preclude the Customer from recovering such costs from Qualified End Users.

4. As LSE, the Customer shall be responsible for taking all actions necessary to establish appropriate NYISO subzone load buses for delivery of SCEDP to Qualified End Users (a) located outside the Customer's service territory and within St. Lawrence County, and (b) located within the Customer's service territory to the extent that the existing Customer sub zone load bus is inadequate.

5. The Customer shall perform load splitting in accordance with a prescribed methodology, and transmit the information derived from load splitting to the Authority on a schedule, agreed upon by the Parties.

## VII. Metering

1. The facilities of Qualified End Users receiving SCEDP must be metered in a manner satisfactory to the Authority, or the Customer must provide another metering arrangement that is satisfactory to the Authority.

2. The Customer shall be solely responsible for:

(a) installing, maintaining, inspecting, verifying and reading all metering equipment in a manner satisfactory to the Authority for purposes of determining hourly electric usage and demand by Qualified End Users within the Customer's service territory; and

(b) ensuring, through agreements with local electric utilities who deliver SCEDP or other appropriate means, the installation, maintenance, inspection, verification and reading all metering equipment in a manner satisfactory to the Authority for purposes of determining hourly electric usage and demand by Qualified End Users located outside the Customer's service territory and within St. Lawrence County.

3. Unless otherwise agreed to by the Authority in writing, metering shall be capable of enabling the Customer to perform load splitting between SCEDP supplied in total or in part to meet the load of individual Qualified End Users, other NYPA power supplied by the Authority to the Customer under the Authority's Service Tariff No. 39A, and any other power supplied to the Customer from any other source.

## VIII. Rates

1. SCEDP sold to the Customer under this Agreement is not and shall not be considered preference power under the Niagara Redevelopment Act (16 USC §§ 836, 836a).

2. Notwithstanding that SCEDP is not preference power, SCEDP will be sold to the Customer at cost-based rates equivalent to rates charged to the Authority's in-state preference customers receiving preference power under the Niagara Redevelopment Act (16 USC §§ 836, 836a) as provided for in the Service Tariff.

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

- a. 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").
- b. Recovery of capital costs using Trended Original Cost and Original Cost methodologies.
- c. Treatment of sales to third parties, including the New York Independent System Operator.
- d. Allocation of Indirect Overheads.
- e. Melding of costs of the Niagara Power Project and St. Lawrence-FDR Power Project for ratemaking.
- f. Post-employment benefits other than pensions (*i.e.*, retiree health benefits).
- g. Rate Stabilization Reserve (RSR) methodology as supplemented by the explanatory statement attached hereto as Exhibit 2.

4. In the event the Authority ceases to employ any of the methodologies and principles enumerated above, the Customer shall have the right to take any position whatsoever with respect to such methodology or principle, but shall not have the right to challenge any of the remaining methodologies and principles that continue to be employed by the Authority. Nothing contained herein shall preclude the Customer from participating in the rate setting process and raising issues as to whether such methodologies and principles have been correctly employed.

---

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

IX. Availability of Energy

Subject to any other limitations set forth in this Agreement, the Service Tariff, and the Rules, the Authority will supply to the Customer sufficient power and energy to meet each Qualified End User's demand and energy usage at the Qualified End User's actual metered load factor in a mutually agreed upon manner.

X. Legal Enactments

If a law is enacted after the Effective Date that, in the opinion of either Party, materially impacts the rights or obligations of a Party under this Agreement, or requires the Authority, directly or indirectly, to provide Hydroelectric Resources for economic development purposes in the St. Lawrence County area in excess of the Maximum Total Allocation Amount provided for under this Agreement, the Parties shall meet within thirty (30) days of a request by either Party to discuss the law and any amendments to this Agreement either Party believes is necessary to account for the impact of such law. If the Parties after good faith negotiations cannot reach Agreement on amendments within sixty (60) days of an initial meeting, then either Party may terminate this Agreement on thirty (30) days written notice to the other Party.

XI. Conditions Precedent

In addition to any other requirements, qualifications and conditions pertaining to the Authority's performance under this Agreement, the Service Tariff and the Rules, the Authority's performance under this Agreement, including but not limited to the Allocation of SCEDP and the provision of Electric Service under this Agreement, are subject to the occurrence of the following conditions precedent:

- a. receipt by the Customer of all approvals from regulatory authorities which are necessary for the Customer to engage in the transactions contemplated by this Agreement, including but not limited to any and all approvals required from the New York State Public Service Commission;
- b. modifications to the Funding Agreement in a manner satisfactory to the Authority; and
- c. written procedures addressing each of the matters identified in Exhibit 3 of this Agreement in a manner satisfactory to the Authority.

XII. Customer Agent

1. The Customer may engage one or more persons (hereinafter, "Customer Agent") to assist it in performing the Customer's obligations under this Agreement, including but not limited to a public utility, LSE, municipal distribution agency, load aggregator, or industrial development authority. The Customer Agent's performance shall be consistent with requirements of the NYISO and all applicable laws and regulations. The Customer shall give the Authority notice of the engagement of any Customer Agent.

2. The Parties agree and acknowledge that: (a) the right to engage Customer Agents is strictly for convenience of the Customer; (b) the right to engage Customer Agents shall not be construed to authorize the Customer to make an assignment of this Agreement or any part of the Customer's rights or obligations under this Agreement to any Customer Agent or any other person; and (c) the Customer shall remain liable to the Authority for the performance of the Customer's obligations under this Agreement notwithstanding the engagement of Customer Agents.

### XIII. Recordkeeping

The Customer shall keep its books, accounts and records pertaining to the Allocation, sale, resale, Sub-Allocation, and delivery of the Allocations and Sub-Allocations pursuant to procedures reasonably deemed necessary by the Authority to ensure compliance with this Agreement, the Rules, the FERC License, NYISO requirements and applicable laws and regulations. The Customer shall provide such information and permit such inspections of its books and records as the Authority reasonably requests. The Customer shall impose similar obligations on Qualified End Users and Customer Agents in Sub-Allocation Contracts and other appropriate documents for the benefit of the Customer and the Authority.

### XIV. Rules, Service Tariff and Conflicts

1. The Service Tariff, 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. The Authority shall provide at least thirty (30) days prior written notice to the Customer of any proposed change in the Rules or the Service Tariff, but in no event shall the Authority provide less notice than that required to be provided to similarly affected Authority customers within New York State.

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

### XV. Term and Termination of Service

1. This Agreement shall be effective on the Effective Date.

2. Electric Service under the Agreement shall continue until the earliest of: (a) with respect to specific Allocations and Sub-Allocations, termination by the Customer with respect to any such Allocation or Sub-Allocation upon sixty (60) days prior written notice to the Authority, provided that such termination shall be effective commencing with the next billing period as provided for in the Service Tariff; (b) with respect to specific Allocations and Sub-Allocations, termination by the Authority of any such Allocation or Sub-Allocation pursuant to this Agreement, the Service Tariff, or the Rules; (c) with respect to specific Allocations and Sub-

Allocations, expiration of any such Allocation or Sub-Allocation by its own terms; or (d) September 1, 2025.

3. Notwithstanding the foregoing Section XV.2, the Authority may cancel Electric Service under this Agreement or modify the quantities of SCEDP associated with any or all of the Allocations: (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) to which the Authority is subject; or (b) as otherwise provided in this Agreement, the Service Tariff or the Rules.

#### XVI. Notification

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

To Authority:

Vice President, Marketing  
New York Power Authority  
123 Main Street  
White Plains, NY 10601  
Facsimile:  
Email:

To Customer:

General Manager  
Massena Electric Department  
71 E. Hatfield Street  
P.O. Box 209  
Massena, NY 13662  
Facsimile:  
Email:

2. 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: (a) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (b) 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; (c) if delivered by hand, with written confirmation of receipt; (d) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (e) 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.

3. As a courtesy, copies of any notice required to be provided by a Party for any of the following matters shall be sent by such Party to IDA and RVRDA at the addresses provided

for below: (a) modifications as provided for in Section V.3 of this Agreement; (b) notice of a request to meet as provided for in Article X of this Agreement; (c) the engagement of a Customer Agent as provided for in Article XII of this Agreement; and (d) a termination or cancellation as provided for in Article XV of this Agreement.

To IDA:

To RVRDA:

## XVII. Miscellaneous

1. No consideration shall be given to the captions of the articles, sections, subsections, paragraphs, clauses or any appendices or other attachments, which are inserted for convenience in locating the provisions of this Agreement and not as an aid in its construction. No consideration shall be given to the fact or presumption that one Party had a greater or lesser hand in drafting this Agreement.
2. 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.
3. Each Party consents to the exclusive jurisdiction and venue of New York State Supreme Court within Albany County, New York, 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.
4. 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.
5. 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.
6. The Customer may not assign or otherwise transfer an interest in this Agreement without written approval by the Authority.
7. This Agreement shall be binding upon and inure to the benefit of the Parties, and their respective successors and assigns, and is made solely and specifically for their benefit. No other person shall have any rights, interest or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.
8. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the matters herein set forth. This Agreement supersedes all previous

communications between the Parties hereto, either oral or written, with reference to the subject matter hereof.

9. 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.

10. If any term or provision of this Agreement is invalidated, declared unlawful or ineffective in whole or in part, or modified 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.

11. Notwithstanding the preceding Section XVII.10, if any provision of this Agreement is invalidated, declared unlawful or ineffective in whole or in part, or 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.

12. This Agreement may be executed in multiple original counterparts, each of which shall be an original and all of which together shall constitute a single instrument.

**[SIGNATURES FOLLOW ON NEXT PAGE]**



AGREED:

**CUSTOMER**

BY \_\_\_\_\_

Name and Title (**Print**) \_\_\_\_\_

Date \_\_\_\_\_

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

BY \_\_\_\_\_

Name and Title (**Print**) \_\_\_\_\_

Date \_\_\_\_\_

## EXHIBIT 1

### ECONOMIC DEVELOPMENT PLAN

This Economic Development Plan (“Plan”) shall apply to the Allocation and Sub-Allocation of St. Lawrence County Economic Development Power (“SCEDP”) made available in accordance with the “Agreement Governing the Sale of St. Lawrence-FDR Project Power and Energy to the Town Of Massena Electric Department For Economic Development Purposes” (“Agreement”).<sup>2</sup>

SCEDP will be made available for sale to the Customer and resale and Sub-Allocation by the Customer to Qualified Applicants (“QAs”) as an incentive for QAs that propose to expand an existing business or propose to locate a new business in St. Lawrence County. A primary goal of the Plan shall be to encourage economic development in St. Lawrence County, including job creation.

In addition to any other requirements provided for in this Plan or the Agreement, it is the Parties’ intent that the Customer will: (1) consult with the St. Lawrence River Valley Redevelopment Agency, St. Lawrence County Industrial Development Agency Local Development Corporation, and any state regional economic development council with responsibility for the St. Lawrence County area (“Economic Development Partners”) to provide effective and competitive economic incentive packages to encourage economic development consisting of SCEDP and other available resources for QAs; (2) effectively market the SCEDP and associated incentive packages in printed promotional materials and websites; and (3) collaborate with the Economic Development Partners to maximize economic development opportunities in St. Lawrence County.

#### **Qualified Applicants**

QAs shall include any of the following types of businesses that engage primarily in the following types of business activities:

- Industrial
- Manufacturing
- Research and development
- Non-retail service firms
- Warehouse and distribution facilities
- Agricultural businesses
- Headquarters facilities

The following businesses and business activities are not QAs, and shall not be eligible to apply for or receive Sub-Allocations under this Plan:

- Educational, religious, or governmental

---

<sup>2</sup> Capitalized terms not defined in this Plan shall have the meaning provided to such terms in the Agreement.

- Lodging facilities
- Legal, medical, or nursing facilities
- Retail businesses
- Residential establishments
- Casino and other gaming establishments

**Qualification Guidelines**

The following preliminary qualification guidelines shall apply to QAs applying for Sub-Allocations of SCEDP:

- QAs must propose to add new electrical load. A proposed project must create a minimum of 100 kilowatts (“kW”) of new electric load.
- QAs must propose to create new jobs. Jobs per MW ratio should fall within the following guidelines:

<u>Employment at the business prior to proposed expansion</u>	<u>New Jobs/MW of Sub-Allocated SCEDP</u>
0	case by case (new business)
1-100	25
101-250	50
251-499	75
500 +	100

- QAs must propose to make capital investments in new or existing facilities. Such investments may include:
  - i. Construction of new facilities.
  - ii. Expansion or substantial modification/refurbishment to existing facilities.
  - iii. Installation of machinery and equipment to, for example, accommodate expansion of production capability.
- Projects should be consistent with any strategic plan and priorities of any state regional economic development council with responsibility for the St. Lawrence County region.

**Allocation and Sub-Allocation Criteria**

The following criteria shall be used to evaluate Applications for Sub-Allocations of SCEDP in addition to any other considerations the Customer determines to be appropriate in accordance with the evaluation and recommendation processes provided for in the Agreement:

- The size/scope of the proposed project.
- The significance of the cost of electricity to the QA’s overall cost of doing business, and the impact that a Sub-Allocation would have on the QA’s operating costs;

- Time schedule of the proposed project. (Projects should start within one year of Sub-Allocation and be completed within three years.)
- The nature and extent of the QA's proposed investment in the project, including the type and cost of buildings, equipment and facilities to be constructed, enlarged or installed if the QA were to receive a Sub-Allocation.
- The number and quality of jobs that would be created and/or retained in exchange for a Sub-Allocation.
- The amount of SCEDP requested by the QA and the reasons for the request.
- The QA's past and proposed energy conservation efforts.
- The relationship of the proposed project to other New York State facilities or business activities owned or conducted by the QA or its affiliates (e.g., whether the proposed project would simply relocate business operations already existing in the State, support other facilities or business operations of the QA in the State, etc.).
- The importance of the proposed project to the community in which the project would be located, including the host community's economic circumstances.

## EXHIBIT 2

### **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 as modified in accordance with the Authority's preference power rate plan approved in 2011, 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 (UCAP) sales to the NYISO net of forecasted UCAP sales included in previous rate year's CoS.
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.

### EXHIBIT 3

1. Procedures for energy data collection by the Customer, the Customer's Agent, and/or local electric utilities providing delivery service for St. Lawrence County Economic Development Power, for all Sub-Allocations made to Qualified End Users whether located within or without the Customer's service territory which (collectively, "Energy Data"). At a minimum, Energy Data shall include energy and demand usage by individual Qualified End Users.
2. Procedures for transmission of Energy Data to the Authority by the Customer, the Customer's Agent, and/or local electric utilities providing delivery service for St. Lawrence County Economic Development Power for all Qualified End Users whether located within or without the Customer's service territory ("Data Transmission"), including the content, means, and frequency of Data Transmission.
3. Procedures for the Customer's billing of Qualified End Users by the Customer. Unless otherwise agreed to by the Authority in writing, at a minimum such procedures shall provide for billing on the identical calendar month basis that the Authority uses to bill the Customer for allocations and sales made to the Customer under Service Tariff No. 39A.
4. Procedures for monthly load splitting by the Customer, including a methodology to be used by the Customer for load splitting.
5. Procedures for accounting for distribution losses that occur between the metering point of Qualified End Users and the relevant sub zone load bus.
6. Procedures for reconciliations or true-ups to account for differences between actual energy usage and scheduled energy usage (i.e., inadvertent energy balances).