FAIRPORT MUNICIPAL COMMISSION AGENDA

February 27, 2019 at 8:00 AM
Village Hall Board Room - 2nd Floor Conference Room

Roll Call

Visitors:

TBD

Unfinished Business:

New Business:

1. A Resolution to Amend the New York Municipal Power Agency (NYMPA) Agreement. 🗐

2. Upcoming FMC Meeting(s):

    a. Fairport Municipal Commission Meeting – Monday, March 11, 2019 at 8 a.m. in the Village Hall - 2nd Floor Conference Room located at 31 S. Main Street, Fairport, New York.

3. A Motion to Adjourn.

RESOLUTION

At a meeting of the Fairport Municipal Commission, held on February 27th, at 08:00AM, held at 31 South Main Street, Fairport, NY 14450

The following resolution was offered by________________, seconded by__________, and adopted unanimously.

BE IT RESOLVED, that Fairport Municipal Commission hereby approves and concurs in the attached Amendment to the NEW YORK MUNICIPAL POWER AGENCY AGREEMENT, pursuant to Article XI thereof.

This Resolution will take effect immediately.

____
Signature

Bryan White
Print Name

Village Manager
Title

02/27/2019
Date

NEW YORK MUNICIPAL POWER AGENCY

6652 Hammersmith Drive, East Syracuse, New York, 13057
Phone: 315/453-1761 Fax: 315/453-7849
www.nympa.org email: info@nympa.org

FREQUENTLY ASKED QUESTIONS
CONCERNING THE PROPOSED AMENDMENT TO THE NYMPA AGREEMENT

1. WHAT IS THE NYMPA AGREEMENT?

Starting in approximately 1995, the members of the MEUA began seriously contemplating “going partial,” and creating a joint action agency to get out from under the regulatory thumb of NYPA and supply their own supplemental power. The NYMPA AGREEMENT was drafted to create the Agency, and allow the members to assume more control of their own affairs. The AGREEMENT bound the members to each other to act together. It was approved by the delegates of each member in 1996. The individual municipal members executed the Agreement at various times over the course of the year.

2. WHAT ARE THE BY-LAWS?

Right after the AGREEMENT was adopted a committee got to work on the By-Laws. It was at the same time and by the same people. Like any By-Laws, the intention was to provide more specificity, to outline duties of officers, etc. The By-Laws were written in 1996, while the AGREEMENT approval process was underway, and adopted in February 1997. The provision of the By-Laws that we are addressing here is ART I, Section 2 regarding withdrawal of a member from the Agency. Ken Stabb of Boonville was on the committee and remembers its work well. Mark Cordeiro was also involved at the time.

3. WHAT DOES THE PROPOSED AMENDMENT ACCOMPLISH?

The proposed amendment is pretty simple. It takes the language right from ART I, Section 2 of the By-Laws regarding member withdrawal, and puts it right into the AGREEMENT itself. We have also added a sentence that the courts can enforce the withdrawal notice provision section to eliminate the risk of any ambiguity.

4. WHY DO WE HAVE TO AMEND THE AGREEMENT NOW?

In the on-going litigation, Massena has argued that the By-Laws regarding withdrawal notice provision (the same ART I, Section 2) is invalid because, they claim, it somehow conflicts with the language in the AGREEMENT. They argue this even though they specifically vowed to follow the By-Laws when they joined the Agency (they were a late joining municipality—they did not join the Agency at first). Indeed, they argued this even though at the membership meeting in April 2011, Andy McMahon, a member of the NYMPA Board from Massena, sponsored a resolution confirming the two-year notice period for withdrawal. Unfortunately, in the ongoing litigation, the judge did not understand how the provisions work together. While no decision has been made, the matter is now in dispute. The trouble is this: If members can leave without the two-year waiting period, then we cannot hedge like we always have. The whole point to this amendment is that we want to get that ability back.

5. WHY IS IT IMPORTANT TO HEDGE SO FAR IN ADVANCE?

A hedge is a contract we enter to secure future pricing. We hedge anywhere from 35 to 2 months in advance. We enter the hedging contracts, usually incrementally and not all at once, when future prices look good. Entering into hedges as much as 35 months ahead of time has been a central feature of the success of the Agency in mastering volatile prices. Remember the polar vortex of January 2014? The hedges we had in place for that month alone paid us over $6MM. That was a direct savings to all of our customers. Those hedges were entered into 15, 6, and 2 months ahead. Right now, given the uncertainty created by Massena's tactics, we cannot enter into new hedges for next year or 2021. We may be missing opportunities right now to get good prices for next winter. In order to deal in good faith with each other and with the counterparties with whom we execute these power swaps (the hedges), we want to eliminate that uncertainty. We want the opportunity to start covering next year as soon as possible.

6. WHAT IS THE PURPOSE OF THE MEMBER MEETING ON FEBRUARY 26?

True, the proposed amendment is not a big deal. It merely puts into the AGREEMENT a provision now in the By-Laws that we all have been bound by for over 20 years anyway. But getting this fixed is very important to our operations. And we have never amended the AGREEMENT before. The amendment is going to require approval by

2/3 of the delegates. In addition, 2/3 of the member municipalities must pass a resolution approving it. It may well be the case that mayors and members of the Village Board are not familiar with the NYMPA AGREEMENT. So, we wanted to give everyone a chance to talk together and be prepared to explain this to your village back home and to ask any questions you may have.

7. **WHAT HAPPENS AFTER THE MEETING?**

   We are asking you to bring this material back home, and start discussing it with the Village Board as soon as possible. We would like to get this amendment approved by, at the latest, the middle of March, so that we can get back to hedging our costs for next winter.

8. **HOW DOES YOUR MUNICIPALITY GO ABOUT ADOPTING THE AMENDMENT?**

   We have provided a model resolution for your community to adopt the amendment. By the way, you can go ahead and do that now, you need not wait for the meeting. Time is of the essence. So, please have the resolution adopted as soon as possible. Have the secretary of the Board certify a copy and mail it, or scan it and email it, to the NYMPA office as soon as possible. Please also call the office, and let Tony know as soon as you have adopted the resolution. Please also keep Tony informed of the process as it unfolds.

9. **WILL THERE BE ANY MORE CHANCES TO GET ADDITIONAL INFORMATION?**

   We are here and ready to talk to you or any of your Village council that want information. We are going to have at least two call-in webinars for interested persons to learn more about this. We expect the sessions to be scheduled February 20th and 22nd, one in the morning, and one in the afternoon. We will let you know. Also, if anyone needs to meet with our team, we will be happy to do that as well.

10. **WHY IS TIME OF THE ESSENCE?**

    Until this amendment is adopted, we cannot enter power swaps—our “hedges”—for the future. Of greatest concern right now is the ability to hedge for the winter of 2020 and 2021. We would like to get back to our practice of protecting the membership from price volatility as soon as possible.

NEW YORK MUNICIPAL POWER AGENCY
AGREEMENT

Between and Among as Potential Eligible Members:

Akron, Andover, Angelica, Arcade, Bath, Bergen, Boonville, Brocton, Castile, Churchville, Endicott, Fairport, Frankfort, Freeport, Greene; Green Island, Greenport, Groton, Hamilton, Holley, Ilion, Jamestown, Lake Placid, Little Valley, Marathon, Massena, Mayville, Mohawk, Penn Yan, Philadelphia, Plattsburgh, Richmondville, Rockville Centre, Rouses Point, Salamanca, Sherburne, Sherrill, Silver Springs, Skaneateles,. Solvay, Spencerport, Springville, Theresa, Tupper Lake, Watkins Glen, Wellsville, and Westfield, becoming a part of this New York Municipal Power Agency Agreement pursuant to its terms after the date hereof.

Dated as of April 17, 1996

New York Municipal Power Agency Agreement

This New York Municipal Power Agency Agreement, dated as of April 17, 1996, is hereby effective between and among the Members (as delineated in Appendix A) upon satisfaction of the preconditions set forth in Article III, Section 3, said municipalities being herein collectively referred to as the "Members".

WITNESSETH

WHEREAS, the Consolidated Laws of New York, General Municipal Law, Section 119-o and Sections 360 and, 361, permit any two or more municipalities which are organized and existing under the laws of the State of New York and which are authorized by such laws to engage in the local distribution and sale of electric energy, to enter into an agreement to jointly provide, purchase and transmit electric service; and

WHEREAS, each of the municipalities desires to enter into an agreement to jointly provide, purchase and transmit electric service and to exercise the powers set out in this Agreement; and

WHEREAS, the governing body of each of the municipalities has duly authorized and approved this Agreement by resolution duly adopted by a majority of the voting strength of that body (a certified copy of each such resolution being attached to the original copy hereof); and

WHEREAS, each of the municipalities desires to become a signatory to the Agreement, NOW, THEREFORE, each of these municipalities does hereby covenant and agree, each in consideration of the foregoing and in consideration of the covenants and agreements of the others, as follows:

I. NEW YORK MUNICIPAL POWER AGENCY

Section 1. **Creation.**

The New York Municipal Power Agency is created to secure an adequate, economical and reliable supply of electric power and energy for its members and in furtherance thereof, to exercise all of the powers granted by the laws of.the State of New York, including, but not limited to, all other powers necessary to effectuate the general purposes herein.

Section 2. **Name.**

The municipalities, acting jointly pursuant to this Agreement, shall be known as the New York Municipal Power Agency ("Agency").

Section 3. **Fiscal Year.**

Unless otherwise provided in the Bylaws or in a resolution adopted by the Board of Directors, the Fiscal Year of the Agency shall commence January 1 and end December 31.

II. PURPOSES AND POWERS.

Section 1. **General.**

Unless restricted by this Agreement, the Bylaws, by resolution adopted by a majority of the votes cast by the Representatives (as set forth in Article III, Section 2, herein), or by contract, the Municipalities jointly, and through the

Agency, may exercise any and all of the powers, rights and privileges of municipalities under New York Law.

Section 2. **Permitted Powers.**

(A) Nothing contained in this Agreement or in the Bylaws shall be construed to prohibit any Member from:

(i) executing one or more other joint action agreements with other municipalities for the purposes allowed under New York Law;

(ii) exercising any joint powers; or

(iii) reselling any power, energy transmission or ancillary services purchased pursuant to Agency agreements, to any and all entities, including entities that are not "public bodies" pursuant to the Niagara Redevelopment Act, consistent with all existing contracts, laws and regulations.

(B) This Agreement hereby authorizes the agency to:

(i) purchase power and energy and enter into multiple or single agreements for the purchase of power and energy and related services for its Members, including any agreements negotiated in advance of the date first above written or negotiated and implemented in advance of the formal approval of this Agreement by the signatory municipalities;

(ii) enter into multiple or single agreements for the provision of transmission services or utilize pro forma transmission tariffs;

(iii) perform load forecast studies, transmission, generation, and purchase options studies, and other planning activities of any and all kinds;

(iv) negotiate on behalf of any and all of its Members;

(v) establish, operate and maintain joint electric service among any or all of its Members;

(vi) acquire, own, lease, purchase, sell, operate and maintain real or personal property;

(vii) establish and perform employment, compensation, transfer, oversight and discharge duties and responsibilities for necessary personnel, including the hiring of an Executive Director, engineers, dispatching personnel, accountants, attorneys and other consultants;

(viii) make expenditures for all legitimate Agency purposes;

(ix) develop a budget, make assessments upon the Members and collect funds for Agency purposes and projects; and

(x) any and all other matters as are reasonably necessary and proper to effectuate and implement joint services or joint projects or other lawful Agency purposes.

III. MEMBERSHIP.

Section 1. **One Class of Membership.**

Membership is limited to municipalities in New York State owning and operating electric distribution or generation and distribution systems. The potential eligible Members are listed in Appendix A. There shall be no other forms or classes of membership, unless the Bylaws so provide.

Section 2. **Representatives.**

Upon execution of this Agreement, each Member shall appoint a Representative to the Agency, to represent that Member in the exercise of its power as a Member, from the commencement of operation of the Agency until another Representative is appointed by the Member's local governing body by resolution. Each Member shall be represented by one Representative. Alternate or successor Representatives may be selected by resolution of the Member's local governing body, in the event of death, illness, resignation, or other inability to serve.

Section 3. **Election of Membership.**

Prior to September 30, 1996, any potential eligible Member may become a party to this Agreement and a Member of the Agency upon: 1) the execution of this Agreement by the municipality upon authorizing resolution of the local governing body of the municipality; and 2) the appointment of a Representative. After September 30, 1996, any potential eligible Member may become a party to this Agreement and a Member of the Agency upon satisfaction of all of the following conditions: 1) its admission, approved at an annual or special meeting of the Representatives by a two-thirds vote of the existing Members; 2) the municipality depositing with the Agency an amount equal to a proportionate share of the up-front and/or fixed costs incurred by the Agency prior to the date of admission of such municipality as a Member of the Agency, as determined by the Board of Directors; and 3) the resolution of the Board of

Directors that the municipality will become a Member of the Agency.

Section 4. **Withdrawal.**

Any Member may withdraw from the Agency upon the giving of notice of withdrawal by the appropriate administrative body of the utility, prior to the first day of January in any year, and such withdrawal shall become effective upon the second succeeding thirty-first day of December after such first day of January. Such notice of withdrawal shall be given in writing to the President and to the Secretary of the Agency. Notwithstanding the foregoing, withdrawal shall not be effective until~~only after the Agency has been in existence for, at minimum, three (3) years from the date first above written, and then only upon the~~

~~following conditions~~: (i) the Member or its Representative shall have filed with the Board of Directors a certified copy of a resolution by the Member's local governing body expressing its intention to withdraw; and (ii) the withdrawing Member shall-have paid, or made arrangements satisfactory to the Board of Directors to pay, to the Agency its pro rata portion of any outstanding financial obligation of the Agency at the time of the Member's withdrawal, including any financial obligation of the Agency pursuant to any and all power and energy supply contracts,

related transmission arrangements and any and all other agreements entered into by the Agency. At minimum, the Member shall pay for any and all power and energy that the Member has agreed to purchase pursuant to any power and energy supply contract, regardless of whether the Member takes such power or not. Upon the fulfillment of these conditions, the municipality will be deemed to no longer be a Member of the Agency.

It is hereby agreed and acknowledged that it will be impossible to measure in money the damage that would be suffered if a Member fails to comply with this Section and that in the event of any such failure, the Agency will be irreparably damaged and will not have an adequate remedy at law. The Agency shall, therefore, be entitled to injunctive relief without bond, in addition to any other remedy to which it may be entitled in law or in equity (including specific performance), to enforce such obligations, and if any action should be brought in equity to enforce any of the provisions of this Section, no Member shall raise the defense that there is an adequate remedy at law.

IV. BOARD OF DIRECTORS.

section 1. **Power and Duties.**

The powers of the Agency shall be exercised by the Board of Directors, in which shall be vested all of the powers conferred on the Agency by the Laws of New York State and by this

Agreement, other than those described in Section VII, herein, which shall require the approval of the Representatives. Directors shall not be compensated. Directors shall discharge their duties in good faith, and with that diligence and care which an ordinary prudent person in a like position would exercise under similar circumstances. Actions by the Board of Directors may be taken upon the vote of a majority of the Directors present and voting at any meeting at which a quorum is present. Each Director shall have one vote. The Board of Directors shall be authorized to develop an annual budget for the Agency's activities, and specific budgets for individual projects. The number of Directors shall be set forth in the Bylaws.

section 2. **Election.**

The manner of election of the Board of Directors shall be as set forth in the Bylaws of the Agency.

Section 3. **Removal.**

Directors who have been elected may be removed for cause at a special meeting of the Representatives called for that purpose by the affirmative vote of two-thirds of the Representatives.

Section 4. **Meetings.**

Meetings of the Board of Directors shall be held in accordance with the provisions of the Bylaws. A quorum for a meeting of the Board of Directors is a majority of the Directors.

Section 5. **Board Shall Elect Officers.**

The Board of Directors shall elect, annually, from their number, a President, a Vice President, a Secretary and a Treasurer. Any such officer may be removed as such officer with or without cause by majority vote of the entire Board of Directors.

V. BYLAWS.

The Board of Directors shall recommend and the Representatives shall adopt Bylaws for the conduct of the affairs of the Agency. The Bylaws shall state the powers delegated to the President, Vice President, Secretary and Treasurer. The Bylaws may establish the office of Executive Director and such other offices as it deems necessary for the conduct of the affairs of the Agency, and the Board of Directors by resolution may establish the duties of such offices. The Bylaws shall be proposed by the Board of Directors and shall become effective when approved by resolution adopted by the affirmative vote Qf two-thirds of the Representatives.

VI. MEETINGS.

Section 1. **Time and Purpose of Meetings.**

The initial meeting of the Representatives and of the Board of Directors shall be held upon the call of the Executive Committee of the Municipal Electric Utilities Association of New York state ("MEUA"), after notice, for the purpose of determining the votes of Representatives, adopting Bylaws, selecting a Board of Directors, electing officers, adopting an initial operating budget for the remainder of the Fiscal Year, entering into any necessary agreement(s), if such agreement(s) are proposed, and transacting any other business that may come before the meeting. Thereafter, the Representatives shall hold an annual meeting at a time and place provided in the Bylaws or in a resolution adopted by the Representatives, at which any business may be transacted, and special meetings upon such call and notice and at such times and places as may be provided by or pursuant to the Bylaws or in a resolution adopted by the Representatives .

Section 2. **Quorum.**

A quorum for a meeting of the Representatives is three-quarters of the total number or Representatives. Except where otherwise specifically stated in this Agreement or in the Bylaws, any action which requires the affirmative vote of a majority of Representatives or Directors or a majority of votes cast by the Representatives, shall be construed to be that majority of Representatives or Directors present and voting or that majority of votes capable of being cast by such Representatives at a meeting at which a quorum is present, and not that majority of all Representatives or Directors or that majority of all votes capable of being cast by all Representatives.

VII. MATTERS REQUIRING MEMBERS' APPROVAL.

Except as provided in Article VIII, no action on any of the following matters shall be undertaken by the Agency except pursuant to a resolution adopted by the Board of Directors and approved by the Representatives by a two-thirds majority vote, provided that such approval of the Representatives may be given by a resolution adopted by the Representatives which is general in scope and continuous in nature and may delegate to the Board of Directors the power to take any and all action reasonably necessary or desirable to accomplish the purposes of the resolution:

Section 1. **Charges.**

The establishment of any formula for assessments, charges, or rates to Members to support the activities of the Agency.

Section 2. **Contracts.**

The execution by the Agency of any contract for power supply and transmission or other service payable from such assessments, charges or rates, on behalf of those Members electing to participate in such contracts. Such agreements may be single contracts or multiple contracts. Notwithstanding the foregoing, the initial rate paid by each Member to the Agency during the first year of operation (as early as October 1, 1997) for power supply, other than transmission and ancillary services, shall not exceed $7.44 per kilowatt per month, assuming the conditions in the following sentence. This maximum Agency rate per kilowatt per month is a levelized rate, based on: (a) the Agency's total projected supplemental kilowatt month deliveries through December 2007, assuming participation in the Agency by virtually all of the eligible Members; and (b) all of the Agency's demand-related costs through December 2007, including capacity-related purchased power costs, the NYPA Tariff 39-A Demand ratchet credits and the Agency's administrative and general costs.

Section 3. **Other Contracts.**

The execution by the Agency on behalf of its Members of any other contract payable primarily from assessments, charges or rates, when such contract by its terms will not expire prior to the end of the Fiscal Year in which it is executed.

Section 4. **Financial Obligations.**

The incurrence by the Agency of any financial obligation in excess of that which is budgeted for the Fiscal Year in which it is incurred.

(A) The expenses for the operation of the Agency shall not exceed $675,000 during the first year of operation (as early as October 1, 1997) and shall not be escalated by more than two and one-half percent (2.5%) per year thereafter, except as modified in accordance with this Article VII.

Section 5. **Budgets.**

The adoption and amendment of an annual operating budget, if such budget requires the assessment of expenses to Members.

Section 6. **Admission or Expulsion.**

The admission or expulsion of Members, as provided in Articles III and X of this Agreement.

Section 7. **Amendment to Agreement.**

The amendment to or termination of this Agency Agreement, as provided in Articles X and XI of this Agreement.

section 8. **Adoption and Amendment of Bylaws.**

The adoption and amendment of the Bylaws, as provided in Article V of this Agreement.

VIII. OBLIGATION TO ABIDE BY PENDING POWER AND ENERGY SUPPLY CONTRACTS AND OR AGREEMENTS.

Notwithstanding the provisions of Article VII, above, the undersigned Members hereby assent and agree to be specifically bound by all the terms and conditions of power and energy supply and transmission agreements, and other related agreements negotiated by MEUA on behalf of the Agency in advance of the date of approval of this Agreement by all of the eligible Members as evidenced by the Certified Resolutions attached hereto. Such power supply and energy agreements shall only become effective upon the assent of twenty-five (25) Members as evidenced by the Certified Resolutions attached hereto. such agreements may include, but may not be limited to, power and energy supply agreements with New York State Electric & Gas Corporation, Northeast utilities Service company and Ontario Hydro. The agreements referenced within this Article shall specifically become an obligation of the Member, enforceable as a contract right of the Agency.

IX. VOTING.

Except as otherwise expressly provided in this Agreement, each action at any meeting of the Representatives shall be taken by a majority of the votes cast on the question by the Representatives present.

X. ANNUAL BUDGET, FINANCING, ASSESSMENTS.

Section 1. **Budget.**

The Board of Directors shall prepare an annual operating budget for each Fiscal Year. The operating budget shall include estimated expenditures for the Fiscal Year less anticipated revenue to be derived from the Agency's properties, operations and contracts during such Fiscal Year. The estimated expenditures shall include the expenses to be incurred in the operation and administration of the Agency, including the salaries of employees and the payment of compensation for engineering, legal, fiscal and other services. The annual operating budget shall include any monies due and owed by the Agency to any third party. Estimated revenues shall include any and all monies to be derived by the Agency from any source which is in excess of that required to pay those items set forth above.

The Board of Directors shall submit the proposed annual operating budget, together with a proposed schedule or rates for Members, to the Representatives at the annual meeting or at a special meeting called for that purpose. The annual operating budget may be adopted by a two-thirds majority of the votes cast by the Representatives at such meeting. Upon approval of the annual operating budget, the net amount of estimated expenditures therein in excess of the estimated revenues therein shall be deemed as a rate assessed against the members. Each Member's rate shall be in the proportion to the formula established and set out in the budget. Upon the approval of the annual operating budget by the Representatives and the formula for assessments, rates and charges, the rate assessed against each Member shall become an obligation of the Members, enforceable as a contract right of the Agency. Such rates shall be paid in accordance with the schedule prepared by the Board of Directors and submitted to the Representatives for their approval with the annual operating budget.

Any Member voting against the proposed annual operating budget and which does not wish to be assessed must submit notice of withdrawal from the Agency within sixty (60) days of the date of adoption of the annual operating budget by the Representatives, in accordance with the procedure set forth in Article III of this Agreement.

Any such withdrawing Member shall not be liable for the proposed assessment, but shall be liable for any obligations incurred prior to the assessment to which it objects, including any pro rata portion of its obligations pursuant to any power and energy supply contract, transmission agreement or pro forma tariff or other agreement entered into by the Agency on its behalf whether or not the Member takes such power, energy or other services. If any member submits notice of withdrawal~~s~~ from the Agency within sixty (60) days of the adoption of the annual operating budget, the Board of Directors shall propose another annual operating budget within sixty (60) days after the Member's withdrawal which shall be approved and assessed as set forth above. Notwithstanding the foregoing, no Member shall withdraw within three (3) years of the date first above written.

Any amendment to the annual operating budget shall be proposed by the Board of Directors and approved by the Representatives in the same manner as the adoption of the annual operating budget.

Section 2. **Liability.**

No person or Member shall have any right or cause of action against any Member not promptly paying any part or all of its assessment, rate or charge but such right or cause of action shall be vested solely in, and may be exercised only by, the Agency, which may enforce the same as a contract right against the non-paying Member. Before exercising any such right, the Agency shall serve notice of such non-payment with the Representative of the non-paying Member, which notice shall state the amount of the unpaid assessment, rate or charge, and demand payment therefor. If such Member has not paid the deficiency in full within thirty (30) days from the date such notice was served, the Agency may take any enforcement action deemed appropriate by the Board of Directors.

Any Member which has (i) defaulted under a contract with the Agency, or (ii) failed to pay its assessments, rates or charges in accordance with this Section, may be excluded from membership in the Agency at an annual or special meeting of the Representatives by the affirmative vote of a two-thirds majority of the Representatives (including the Representative of the defaulting member). The expulsion of a Member from the Agency shall not affect any obligations for assessments or obligations under any contract between the expelled Member and the Agency, and the excluded Member shall continue to be liable for the unpaid assessments and for its obligations under this Agreement.

Section 3. **Special Projects.**

Special projects of the Agency, or projects among fewer than all Members of the Agency, may be financed by separate assessments, rates or charges upon those Members primarily benefitted by those projects. Any such arrangement must be proposed by the Board of Directors and approved by the Representatives, as provided for other decisions requiring approval by the Representatives as set forth herein.

XI. AMENDMENTS TO THIS AGREEMENT AND THE BYLAWS.

This Agreement may only be amended at a regular or-special meeting of the Representatives for which notice stating the purpose shall be given to each Representative and any such amendment shall only become effective when (a) approved by two-thirds of all of the Representatives, and (b) approved and concurred in by municipal and governing body resolutions of two-thirds of all of the Members.

The Bylaws may only be amended by the affirmative vote of a majority of the Representatives present and voting at an annual or special meeting.

XII. FEDERAL TAX STATUS.

The Board of Directors are hereby authorized , if the Board of Directors so determines, to file for status as a 501(c)12) municipal entity under the Federal Internal Revenue Code, as it may be amended from time-to-time, to effectuate the purposes of this Agreement.

XIII. TERMINATION.

This Agreement may be terminated by the vote of two-thirds of the Representatives at a regular meeting or a meeting specially called for that purpose, but not until after all debts of the Agency have been paid, including any contractual obligations, and not until the Agency has operated, at minimum, for three (3) years from the date first above written; and only upon the approval of same by two-thirds of the Members, as evidenced by local governing body resolutions filed with the Board of Directors. Thereafter, the Board of Directors shall liquidate the business of the Agency as expeditiously as possible, and distribute the net proceeds to the Members in the ratio that the total assessment, rate or charges made against each of them bears to the sum of the total assessment made against all of them.

IN WITNESS WHEREOF, the following eligible Members may become signatories of this Agreement, Akron, Andover, Angelica, Arcade, Bath, Bergen, Boonville, Brocton, Castile, Churchville, Endicott, Fairport, Frankfort, Freeport, Greene, Green Island, Greenport, Groton, Hamilton, Holley, Ilion, Jamestown, Lake Placid, Little Valley, Marathon, Massena, Mayville, Mohawk, Penn Yan, Philadelphia, Plattsburgh, Richmondville, Rockville Centre, Rouses Point, Salamanca, Sherburne, Sherrill, Silver Springs, Skaneateles, Solvay, Spencerport, Springville, Theresa, Tupper Lake, Watkins Glen, Wellsville, and Westfield. The Members will have caused this Agreement to be executed and attested by a duly authorized officer, and will 6ause to be attached hereto the

Certified Resolution of its governing body authorizing that execution, all effective as of the day and year first written above.

APPENDIX A

Potential Eligible Members of the New York Municipal Power Agency: Akron, Andover, Angelica, Arcade, Bath, Bergen, Boonville, Brocton, Castile, Churchville, Endicott, Fairport, Frankfort, Freeport, Greene, Green Island, Greenport, Groton, Hamilton, Holley, Ilion, Jamestown, Lake Placid, Little Valley, Marathon, Massena, Mayville, Mohawk, Penn Yan, Philadelphia, Plattsburgh, Richmondville, Rockville Centre, Rouses Point Salamanca, Sherburne, Sherrill, Silver Springs, Skaneateles, Solvay, Spencerport, Springville, Theresa, Tupper Lake, Watkins Glen, Wellsville, and Westfield.

NYMPA

CONSTITUTION AND BY-LAWS
OF THE
NEW YORK MUNICIPAL POWER AGENCY

Adopted: February 13, 1997
Amended: May 24, 2001
Amended: May 19, 2005
Amended: May 8, 2014

<u>THE CONSTITUTION OF THE</u>
<u>NEW YORK MUNICIPAL POWER AGENCY</u>

This Agency shall be entitled the New York Municipal Power Agency (hereinafter "Agency" or "NYMPA"), and is established in accordance with, and subject to, the New York Municipal Power Agency Agreement (Joint Agreement) provisions. The NYMPA may be incorporated under the Laws of New York State.

ARTICLE I - GENERAL MATTERS

Section 1. Purposes and Authorities. The purpose of this Agency is to enter into joint agreements for the provision of power and energy for its Members and others, subject to the terms of the Joint Agreement. The Agency will achieve such purposes by obtaining or purchasing generation, transmission, and wheeling services. The Agency shall operate for the mutual benefit of all Members, in accordance with Article II, Section 2 of the Joint Agreement.

Section 2. Tax Status. The Agency will be a public benefit not-for-profit entity and may be established pursuant to Internal Revenue Code, Section 501 (c) (12) or as such Code Section may be amended from time to time.

Section 3. General. The Agency is constituted to assist Member Public Power Systems, and act on their behalf, to negotiate and enter into contracts for the purchase, sale, exchange, interchange, wheeling, pooling, transmission, or use of electric power and energy, within and without New York State, and to encourage the fullest and best possible use of electric power and energy at the lowest cost, consistent with standard economic principles and prudent utility practices (including service reliability and continuity).

Section 4. Fiscal Year. The fiscal year of the Agency shall begin on the first day of January each year and shall end on the 31st day of December of that same year.

Section 5. Organizational Meeting. The Organizational Meeting of the NYMPA will be held on February 13, 1997. Adoption of this Constitution and the Agency By-Laws will occur initially, followed by Election of the Five Agency Officers by the Membership. These Officers will serve until successors are elected, in accordance with the provisions of the By-Laws.

Immediately following their election, these Officers will affirm the results of such election, pursuant to Article IV Section 5 of the Joint Agreement.

The Agency will thereafter meet at least Annually to report to the Membership.

Section 6. Amendments. The Constitution of the NYMPA may be altered or amended at any duly called meeting of the Agency Membership (with at least 30 days advance notice) by a 2/3 (two-thirds) majority vote of the Members present or represented at said meeting, provided proper notice has been given to the Members of the proposed amendment; and further provided that the purposes of the NYMPA be maintained in any alteration or amendment of this Constitution.

BY-LAWS OF THE NEW YORK MUNICIPAL POWER AGENCY

ARTICLE I - MEMBERSHIP

Section 1. Membership subject to all conditions hereinafter stated in these By-Laws, shall be open to all publicly-owned electrical distribution systems within the State of New York having facilities owned and operated by it for the production, distribution, purchase and/or sale of electricity to the general public, in the State of New York, being operated under the provisions of New York State Law. Members shall be defined as those actively engaged in reoccurring purchases of bulk incremental power from the NYMPA.

Section 2. Withdrawal. A Member shall be entitled to withdraw from membership upon the giving of notice of withdrawal by the appropriate administrative body of the utility, prior to the first day of January in any year, and such withdrawal shall become effective upon the second succeeding thirty-first day of December after such first day of January. Such notice of withdrawal shall be given in writing to the President and to the Secretary of the Agency. Notwithstanding the foregoing, withdrawal shall not be effective until all required payments are made to the Agency, consistent with the Joint Agreement and the Agency By-Laws, and all other agreements that were made by the Agency prior to the official notification of leaving the Agency by the Member.

Section 3. Constructive Withdrawal. A Member which ceases to be authorized to engage in the production, distribution, purchase and/or sale of electricity in the State of New York shall cease therewith being a Member of the NYMPA. If a Member sells or otherwise transfers all or substantially all of its electric utility plant and operations to a utility that is not a Member of the NYMPA, such Member's membership shall automatically terminate subject to the provisions of these By-Laws. Not-withstanding the foregoing, withdrawal shall not be effective until all required payments are made to the Agency, consistent with the Joint Agreement and the Agency By-Laws.

(a) The failure of a Member to actively engage in recurring purchases of bulk incremental power from NYMPA, as defined in Article I, Section 1 of these By-Laws, unless arising from a loss of load outside the Member System's control, shall constitute that Member's constructive withdrawal from NYMPA. Unless the Member satisfies the notice requirements for withdrawal established in Article I, Section 2 of these By-Laws, such failure shall also constitute a contractual default by the Member, for purposes of Article X, Section 2 of the NYMPA Agreement, of that Member's obligation under the Agreement and these By-Laws.

(b) If the Board has reasonable grounds to believe that a Member will not continue to actively engage in recurring purchases of bulk incremental power from NYMPA, the Board may seek assurance from the Member that the Member will continue to make such purchases. If the Member fails to provide such assurances, the Board shall take any such steps it considers, in its discretion, to be appropriate under the circumstance, including, but not limited to, requiring increased security from the Member, and ceasing to act as the Member's Load Serving Entity ("LSE"). The Board may also call for a vote by the Membership to expel the Member according to the terms of Article X, Section 2 of the NYMPA Agreement.

(c) Neither a Member's constructive withdrawal nor its expulsion under this provision shall relieve that Member of any obligations or payments due to the Agency at the time of such withdrawal or expulsion.

Section 4. Representation. All Members of the NYMPA shall have an equal vote in all matters. The sole appointed delegate from each Member System shall be the representative, consistent with the Joint Agreement, for the purposes of voting.

Section 5. Constructive Involvement. The Agency will have the responsibility to examine Load Patterns of Member Systems and to make recommendations to ensure that the best overall utilization of power and energy (both hydro-electric and incremental) will occur.

ARTICLE II - OPERATIONS

Section 1. Member Contracts. The services the Agency provides its Member Systems shall be requirements service, defined as the Member System's total load less that System's NYPA allocation. The Agency shall also serve as the Member System's LSE with the New York Independent System Operator ("NYISO"). The Agency may enter into contracts with Member Systems to supply electric power and energy supplemental to the Member System's hydro-electric allocation, and/or to provide other services to the Member Systems. These contracts shall be consistent with these By-Laws and the Joint Agreement.

Section 2. Purchase and Transmission Contracts. The Agency may enter into contracts for the purchase of supplemental power from wholesale suppliers and for the supply and delivery of such power, consistent with the Joint Agreement.

Section 3. Sales Contracts. The Agency may enter into contracts for the sale of supplemental power, with Member Systems and others. Such contracts shall be consistent with the Joint Agreement.

Section 4. Bank Deposits. All funds of the Agency shall be deposited to the credit of the Agency in Interest Bearing Accounts (whenever possible), in such bank or banks as the Board of Directors may select, consistent with the relevant New York State Laws, including, but not limited to, the Local Finance Law.

Section 5. Hedges. The Agency is authorized to enter into hedges against risk or other forward contracts for energy or other necessary commodities. Such hedges may extend into the future for a period greater than the notice period required by Article I, Section 2 of these By-Laws for withdrawal from the Agency, upon such policy terms as may be approved by Member Systems.

ARTICLE III - OFFICERS

Section 1. Officers. The Officers of this Agency shall constitute the Board of Directors and shall be a President, Secretary, Treasurer, and two Vice Presidents (a Vice President and a Second Vice President). Three voting Members of the Board of Directors (Officers) shall constitute a quorum. A minimum of three affirmative votes of Officers will be necessary to enact resolutions or to take other action. Directors may attend meetings of the Board by teleconference, provided such meeting are conducted in such a manner and using such technology that all participating Directors are able to hear each other at the same time.

Section 2. Term of Office. Directors of the Agency shall serve a staggered five (5) year term. A new Director shall be elected each year, to replace that Director whose term has expired with the incumbent Director being ineligible for re-election. Directors shall be elected by a majority vote of the Members at the annual meeting.

Section 3. Board Shall Elect Officers. The Board of Directors shall elect annually, from their number, a President, Vice President, and second Vice President a Secretary and a Treasurer, pursuant to Article N Section 5 of the Joint Agreement. These Officers shall serve one year from the close of the annual meeting, or until the office is vacated.

Section 4. Governing Body. The Board of Directors shall be the governing body of this Agency and, with the General Manager, shall serve as the general administrative body of this Agency, subject to the Constitution and By-Laws.

Section 5. Duties and Powers of the Board of Directors. The Board of Directors shall have the general management responsibility over the affairs of the Agency provided, however, that they shall be empowered to hire a General Manager and other Agency employees as are necessary, and select lawyers, engineers, accountants, and such other service providers as they determine to be necessary and appropriate to carry on the functions of the Agency, and to delegate to such persons such powers and duties as the Officers shall find necessary and appropriate in the interest of the NYMPA. They shall designate the Official Depository(s) of the NYMPA.

Section 6. Duties and Powers of the President. The President shall preside at all meetings of the Agency and of the Board of Directors, and shall perform such other duties as may be provided for in the Constitution and By-Laws. In the event of absence of the President, the Vice-President shall preside at meetings of the Agency and of the Board of Directors. Should the Vice President be unable to preside, the meetings shall be chaired by the Second Vice President. The President shall be an ex-officio Member of all Committees.

Section 7. Duties and Powers of the Vice President. The Vice President shall perform the functions and duties of the President in the absence or disability of the President. The Vice President shall have other powers and duties as may be assigned from time-to-time by the Board of Directors.

Section 8. Duties and Powers of the Second Vice President. The Second Vice President shall perform the functions and duties of the President in the absence or disability of the President and the Vice President; plus other powers and duties as may be assigned from time to-time by the Board of Directors. The Board of Directors shall appoint a person to fill the vacated Office from the membership as defined under Article I, within thirty (30) days after acceptance of the resignation.

ARTICLE IV - STANDING COMMITTEES

Section 9. Duties of the Treasurer. The duties of the Treasurer shall include the custody of all the funds and securities of the NYMPA. The Treasurer shall take such steps as may be reasonable necessary to collect monies due the NYMPA. The Treasurer will keep accurate financial records of NYMPA operations. The Treasurer shall be bonded, and shall keep a full and accurate account of the receipts and disbursements of the Agency. The Treasurer shall deposit (or oversee and be responsible for the depositing of) all monies in the name of the NYMPA. The treasurer may delegate any of his duties, under specific conditions approved by the Board of Directors.

Section 10. Duties of the Secretary of the Agency. The duties of the Secretary shall include, but not be limited to:

(a) Give notice of meetings of Member or Directors.
(b) Keep clear, accurate records of the Agency, including membership and attendance records.
(c) Record and maintain minutes of all periodic, annual, and special meetings of the membership and of the Board of Directors.

The Secretary may delegate any of the duties, under specific conditions approved by the Board of Directors.

Section 11. Succession of Officers. When an Officer of the Agency ceases, from any cause whatsoever, to hold a position within a Member System, they may be deemed ineligible to continue to hold office in the Agency. The Board of Directors, by a majority vote, shall appoint a successor from the membership as defined under Article I, within thirty (30) days, to serve until the next Annual Membership Meeting.

Section 12. Resignation. Any Officer may resign at any time by giving written notice to the board of Directors. Any such resignation shall take effect upon its being accepted by the Board of Directors. Such the Board of Directors will have the authority to make appointments of representatives from Member Systems to Standing Committees of NYMPA. These Committees will include, but not be limited to: Nominating, Advisory, Budget, By-Laws, and others; as well as other Ad Hoc Committees created on an as needed basis for specific purposes.

ARTICLE V - PERSONNEL

Section I. The Board of Directors may appoint a person to the position of General Manager. The General Manager shall be responsible for and perform all the necessary activities to carry out all the functions and business of the Agency, and other activities that may be assigned by the Board of Directors.

Section 2. The Board of Directors may appoint a person or persons to a clerical staff position(s). The duties will include, but not be limited to:

a) The Individual(s) shall keep a roll of the Directors of the Agency in the minute book of the Agency, and shall have custody of the NYMPA seal and Agency records, and shall keep same within the State of New York.

b) The Individual(s) shall file with the Secretary of State and any other State Office, Officer, or person, any papers required by law to be so filed and shall procure and file in his/her own office copies of all papers required by law to be filed with the Secretary of State or others.

c) The Individual(s) shall perform such other duties as required by the President and Board of Directors.

Section 3. The Board of Directors may select other persons, as required, to perform all other necessary duties to implement the Joint Agreement.

ARTICLE VI - REVENUES

Section 1. Sale of Electricity to Participating Members. The total cost of the Agency, both direct and indirect; and projected, budgeted or actual; may include, but not be limited to: the cost of electric power and energy purchased by the Agency, the Agency's cost of operating (to the extent that is directly attributable to the sale and dispatch of electrical power), the cost of transmission, the cost of dispatch and other services, the Agency's organizational costs (to the extent that is directly attributable to the sale and dispatch of electrical power), and the Agency's administrative and general costs, including the cost of any working capital fund necessary to ensure timely payment of any of the Agency's obligations (to the extent that is directly attributable to the sale and dispatch of electrical power). These shall constitute the operating revenue requirements of the Agency. The Agency will develop rates and charges, including the terms and conditions for service of the Agency, applicable to the purchase of supplemental power requirements by the Member Systems.

The costs of intervention and participation in regulatory proceedings and power supply or transmission projects analysis (to the extent that is directly attributable to the sale and dispatch of electrical power) may be incorporated into the "Sale of Electricity" charges.

Section 2. Fees for Professional Services. The Agency may provide Organizational, Administrative, Planning, Clerical, and/or other Professional Services to separate Entities, for which the Agency will be compensated at Fee Schedules to be established by the Board of Directors.

Section 3. Assessments. In order to carry on the affairs of the NYMPA, the Board of Directors shall adopt no later than December 31 of each year, an Annual Budget for the following year: provided however that the initial Annual Budget shall be adopted as soon after February 13, 1997 as is possible. The operating costs of the NYMPA remaining (if any) after deduction of anticipated revenues from other sources, may be assessed by the Board of Directors to NYMPA Members. The Board of Directors may make the assessment on a proportional basis. Any and all Assessments must be approved, in advance, by the Membership at a Meeting of the Member Systems, called for this purpose.

a) Basic Assessments. A portion of the funds attributable to common services provided to Members (*e.g.*, Public Service Commission filing fees, administrative costs, etc.) required by the Budget, shall be assessed against the Members in amounts to be determined (with prior Membership Approval), by the Board of Directors; and are to be Cost Based or assessed in any other manner deemed to be equitable (with prior Membership Approval) by the Board of Directors.

b) Additional Assessments. The remaining portion of said Budget shall be paid by each Member on a “fee for service basis” in such amounts as are from time-to-time set by the Board of Directors (with prior Membership Approval). Such Additional Assessments may be allocated to: (1) Projected services particular to each Member, and (2) Projected services which the

Board of Directors determines from time-to-time are of common benefit to all Members. Fees for services of common benefit programs shall be paid by each Member in a manner deemed to be equitable by the Board of Directors (with prior Membership Approval).

Section 4. Special Fees on Withdrawal and/or Constructive Withdrawal. In the event that a Member ceases to be a Member (even by virtue of the sale or transfer of all or substantially all of its utility distribution plant and operations, to an entity not a Member, such Member shall, concurrent with such withdrawal, pay to the NYMPA, Special Fees to be determined as follows:

a) Three times the currently approved Basic Assessments, plus

b) Three times the total currently budgeted Additional Assessments times the ratio by which such Member's last NYMPA purchase of electricity bears to the total NYMPA purchase of all Members for the same period, plus

c) Administrative and Organizational Departure Fees, plus contractual obligation expenses, such as power supply costs, all of which will be determined by the Board of Directors to include, but not be limited to, the Agency's Organizational Costs and the Agency's Administrative and General Costs (including the cost of Working capital) and are to be cost-based; plus

d) Any other costs necessary to meet the obligations of the NYMPA that are developed in accordance with the Joint Agreement.

e) If deemed feasible by the Board the calculation of the withdrawal fees will be performed at the time of acceptance of the notice of withdrawal, if such notice is provided, and will be based on the conditions and circumstances then in effect.

Section 5. Special Assessments on Future Participation. Any Utility System which was not a NYMPA Member on November 15, 1996 will be considered to be a Late Participant. New Members may be admitted upon approval by the NYMPA Board, upon such conditions as the Board may determine, and upon approval of two-thirds (2/3) of the Members present and voting. Such System shall be assessed Late Participation Fees to cover the Agency's additional administrative and contractual expenses in accommodating that system. Such Assessment are to be determined by the Board of Directors of the NYMPA.

ARTICLE VII - MEETINGS

Section 1. Annual Meeting. Written Notice of the Annual Meeting, which is to be held in May or June, shall be issued. Such Notice shall be given at least 30 calendar days in advance of the Meeting, and is to be provided by the Secretary of the NYMPA or his/her designee.

Section 2. Special Meetings. Any three Directors may call a Special Meeting of the Board upon giving a minimum of seven (7) calendar days' notice to all Members of the Board. Special Meetings may also be called by the Board upon the request of 25% of the Members of the Agency, to the Board of Directors. A minimum seven (7) day notice will be required for such Special Meeting. The notice for a Special Meeting shall briefly state the items of business to be considered at the Meeting, and no other items shall be considered. Members may attend Special Meetings by teleconference, provided such meetings are conducted in such a manner and using such technology that all participating Members are able to hear each other at the same time.

Section 3. Conduct of Meetings. Three-quarters (3/4) of the Member Systems shall constitute a quorum for the transaction of business at any meeting, in accordance with the Joint Agreement. For the purposes of establishing the presence of a quorum of Members, those systems represented shall be counted. A majority vote of Members of the NYMPA voting will be required to authorize action of any nature, except as required in Article IX of these By-Laws and Article IV, VII, X, and XI of the Joint Agreement.

Section 4. Proxy. An accredited delegate is defined as a person authorized by a Member System to represent, and vote for said Member. Such authorization shall be in writing properly executed and filed with the Secretary prior to the commencement of the meeting. An accredited delegate may represent more than one Member.

ARTICLE VIII - INDEMNIFICATION

Section 1. Indemnification. To the extent permitted by the laws of New York, from time-to-time in effect, the NYMPA shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was an Officer, the General Manager or other employee, or an agent of the NYMPA, or is or was serving at the request of the NYMPA as an Officer, employee or agent of another authority, corporation, partnership, joint venture, trust or other enterprise, against all expenses including attorneys' fees (and except in the case of a derivative action, suit or proceeding), any judgments, fines and amounts paid in settlement, actually and reasonably incurred in connection with the defense or settlement of such action, suit or proceeding (if they acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the NYMPA), and; with respect to an criminal action or proceeding, has no reasonable cause to believe the conduct was unlawful; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of the duty to the NYMPA unless and only to the extent that the Court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability (but in view of all circumstances of the case), such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, or itself, create a presumption that the person did not act in good faith and in a manner which was reasonably believed to be in or not opposed to the best interests of the NYMPA, and with respect to any criminal action or proceeding, had reasonable cause to believe that the conduct was unlawful.

The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any agreement, or otherwise, both as to capacity while holding such office, and shall continue as to a person who has ceased to be a Director, Officer, employee, or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

Section 2. Insurance. The Agency may purchase and maintain insurance on behalf of any person who is or was an Officer, employee or agent of the NYMPA, or is or was serving at the request of the Agency as an Officer, employee or agent of another authority, municipality, corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him/her and incurred in any such capacity, or arising out of such status, whether or not the NYMPA would have the power to indemnify against such liability under the provisions of this Article or of the laws of New York State.

ARTICE IX - AMENDMENTS

The By-Laws of the NYMPA may be altered or amended at any duly called meeting of the Agency Membership (with at least 30 days advance notice) by a majority vote of the Members present and voting at said meeting, provided proper notice has been given to the Members of the proposed amendment; and further provided that the purposes of the NYMPA be maintained in any alteration or amendment of these By-Laws.

ARTICLE X - RULES OF ORDER

Robert's Rules of Order shall be applicable in all activities, actions, proceedings, meetings, and documents of the NYMPA, except where found to be in conflict with the Joint Agreement and/or these By-Laws.