



***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

THE CONSTITUTION OF THE NEW YORK MUNICIPAL POWER AGENCY

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. 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.

- (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 1. 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.

ARTICLE 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.