

February 26, 2015

MEMORANDUM TO THE TRUSTEES

FROM THE PRESIDENT and CHIEF EXECUTIVE OFFICER

**SUBJECT: St. Lawrence/FDR Project Relicensing Agreement –
Ten-Year Review with Local Government Task Force**

SUMMARY

The New York Power Authority (“NYPA”) staff has concluded a tentative agreement with the Local Government Task Force (“LGTF”) on a comprehensive, multi-year proposal valued at more than \$100 million to the North Country. It includes a \$30 million discount in electric rates for businesses and dairy farms in St. Lawrence, Jefferson and Franklin counties between now and 2018; the implementation of the Northern New York Power Proceeds legislation (value of over \$60 million); and more than \$15 million to support energy efficiency projects, construct new recreational facilities, and provide other benefits to the local communities and the North Country economy.

The Trustees are requested to authorize staff to take actions identified by the ten-year review of the St. Lawrence Relicensing Settlement Agreement to provide benefits to the North Country and to authorize additional expenditures in the amount of \$45.1 million.

BACKGROUND

In 2003, the St Lawrence Project was issued a new license by the Federal Energy Regulatory Commission (“FERC”). There were several Settlement Agreements that supported the new license including one with the LGTF, which is composed of representatives from the municipalities and school districts bordering the Project. The LGTF Relicensing Settlement Agreement (“RSA”) provides that “the Parties shall conduct a review of this agreement every 10 years commencing in 2013” to consider “issues not anticipated at the time of relicensing.” The potential issues mentioned in the agreement included but were not limited to:

- Federal or State environmental prescriptions affecting the Project
- Economic impact of loss of major industrial customers in the Project Area
- Economic impact on the communities of any decrease in the local power allocation
- Economic effect of resolving Mohawk land claims
- Comparative Review of costs and benefits provided to local communities by other NYPA facilities
- Unanticipated capital outlays for the Project
- Lower or higher average water flows
- General economic condition of the Project

With the closing of the General Motors plant and Alcoa's East Plant, as well as the loss of many other businesses, the economy of the North Country has been in decline. The LGTF made arguments that NYPA should significantly increase the benefits it already provides as part of the relicensing settlement.

NYPA is not required by the RSA, or by any statute or law, to provide additional benefits to the LGTF communities. However, these proposed actions will aid the ailing economy of the North Country.

DISCUSSION

Since December 2013, the LGTF and NYPA staff met extensively and completed the review of the St. Lawrence Relicensing Settlement Agreement. As part of the review process, NYPA staff and the LGTF compiled a list of NYPA actions that could be taken to benefit the North Country, described in detail in Exhibit "A" and summarized below. These actions, including the Northern New York Power Proceeds Act, are expected to provide over \$100 million in value to the North Country economy. NYPA staff requested and has received a letter from the LGTF agreeing that the review process has been completed and that the LGTF will work with NYPA to implement these commitments. The boards of the municipalities and school districts that comprise the LGTF have ratified the end of the review and the proposed actions listed in Exhibit "A."

Economic Development Strategic Marketing Plan

NYPA will fund an economic development, strategic marketing and global search study for the LGTF communities for a period of up to five years. NYPA will hire a firm, selected in accordance with NYPA's procurement procedures, to assist the LGTF communities' local government, economic development, business, and civic leaders in a national and international marketing and search effort to identify and secure the development of business and industry in the LGTF communities. The cost of the study will be up to five million dollars (\$5,000,000).

Temporary Reduction in Electricity Costs for North Country Farms and Businesses

This proposal is similar to the Temporary North Country Stimulus Plan approved by the Trustees on May 19, 2009.

NYPA will work with the upstate utilities (National Grid and NYSEG), as was done in the past, to construct a financial pathway to flow dollars from NYPA to the businesses and active dairy farms in the targeted Preservation Power region through reductions in the local utility's monthly electric bill. The funds to support this program are generated by the net margins produced by the sale of hydropower into the wholesale energy market. The temporary curtailment at Alcoa East has led to unused power which is sold into the wholesale energy market. As with the prior plan, this commitment would be limited to ten million dollars (\$10,000,000) per year. This commitment will run for three years or until Alcoa East returns to service, whichever is earlier. The total authorization requested for this program is \$30 million (\$30,000,000).

Build Smart NY Program

NYPA shall initiate a BuildSmartNY energy efficiency and renewable energy savings program and grant fund for eligible governmental and school buildings in the LGTF communities in an amount up to one million five hundred thousand dollars (\$1,500,000). NYPA will fund energy audits, as needed, and other appropriate studies and steps for each eligible building participating in the energy efficiency and renewable energy savings program from the \$1.5 million grant fund.

Recreational Assessment Study and Implementation

Article 415 of the FERC license for the St. Lawrence/FDR Project requires that every twelfth year following license issuance (starting in 2015), NYPA shall prepare and file with FERC a Recreational Use Report (“RUR”) assessing whether the recreation facilities at the Project are sufficient to meet the recreational demand. As part of the review, NYPA will hire an independent Recreational Facility Planner before the formal recreational assessment is conducted to develop a suite of proposed recreational improvements that are consistent with the interests expressed by the LGTF. NYPA staff and LGTF will work with the consultant to develop a list of mutually acceptable projects. NYPA will incorporate the list into the results of the 2015 RUR and into a proposal to FERC to modify the Project Recreational Plan. The RUR and the application to modify the Project Recreation Plan will be filed simultaneously with FERC in 2015. NYPA will implement the plan after FERC’s approval. NYPA will commit up to \$7.5 million (\$7,500,000) for this work.

Shoreline Stabilization

Article 401 of the FERC license for the St. Lawrence/FDR Project requires that NYPA develop a Shoreline Stabilization Plan to stabilize the eroding shorelines within the Project boundary and that NYPA provide up to \$125,000 annually for adjoining landowners to perform small stabilization projects. As part of the review, NYPA will continue the Adjacent Landowner Shoreline Stabilization Program (“ALSP”), without imposing limitation on the length or cost of any individual project. NYPA shall fund the ALSP to a level of \$1.75 million (\$1,750,000) until the next ten-year review. Approximately \$1 million (\$1,000,000) of this funding will come from unused monies currently allocated for shoreline stabilization pursuant to the current FERC-approved shoreline stabilization plan. In return for NYPA continuing the ALSP, the LGTF will support NYPA in any application or filing made with FERC intended to terminate any obligation under the terms of Article 401 of the FERC license and existing implementation plan other than the continuation of the ALSP program.

High Water Flow Adjustment

Under the RSA, NYPA agreed that for any year in which the generation at the St. Lawrence/FDR Project exceeded 7.0 million MWh, a High River Flow Adjustment (“HRFA”) would be paid to the LGTF based upon the amount of generation in excess of 7.0 MWh. There was a dispute regarding how to calculate the HRFA. NYPA will pay \$286,000 to the LGTF for monies due under the terms of the RSA using the LGTF calculation and apply LGTF’s

calculation methodology for determining the amount of High River Flow Adjustment payments, going forward.

Additional North Country Benefits

After the completion of NYPA's current on-going study and evaluation of emergency response requirements at each of NYPA's existing projects, NYPA will consider providing the LGTF communities funding and support that is appropriate and consistent with the results of the aforementioned study for emergency response services they provide NYPA. The level of funding for the capital improvements and operations will be determined by the study.

NYPA will evaluate the changes to the Iroquois Dam road located in Waddington so as to allow use and passage by emergency vehicles and authorized users of the adjoining lands and complete all agreed to and necessary improvements to the emergency access road for the community located on Wilson Hill Island.

NYPA will work with the LGTF communities to identify roads that are used predominately to service and access NYPA facilities. NYPA will provide annual support for the maintenance of the identified roads.

NYPA will work with the LGTF, local fishing clubs and the state and federal regulatory agencies to evaluate the potential for improving the walleye fishery in Lake St. Lawrence by establishing imprinted walleye stock in the upstream tributaries of the St. Lawrence River to enhance walleye spawning.

Summary of Actions

The implementation of these actions will be completed over the next ten years. The estimated cost of these actions is \$45.1 million. If additional funding is required, NYPA staff will request additional authorization from the Trustees.

With the Trustee's approval, NYPA staff will work with the LGTF negotiating team to memorialize these commitments between the parties, and then move forward with implementation.

FISCAL INFORMATION

Payments associated with this project will be made from the Authority's Capital Fund and Operating Funds, as appropriate.

RECOMMENDATION

The Senior Vice President – Public and Regulatory Affairs recommends that the Trustees authorize staff to memorialize the commitments in a form consistent with Exhibit "A" and to authorize the expenditure of \$45.1 million to move forward with the implementation of the commitments with the Local Government Task Force.

For the reasons stated, I recommend the approval of the above-requested action by adoption of the resolution below.

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

RESOLVED, That the commitments set out in Exhibit “A” are approved and are to be memorialized in a final document to be developed by NYPA staff and the Local Government Task Force negotiating team, as recommended in the foregoing memorandum of the President and Chief Executive Officer ; and be it further

RESOLVED, That expenditures in the amount of \$45.1 million are hereby approved for the purpose of implementing the commitments set forth in Exhibit “A”; and be it further

RESOLVED, That as a condition of making available the amounts specified in the foregoing resolution, the Executive Vice President and Chief Financial Officer or the Treasurer shall certify that such monies are not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority’s General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further

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

Benefits to North Country to Be Provided by NYPA

- The Northern New York Power Proceeds Allocation Act ("NNYPPAA") establishes the "Northern New York Economic Development Fund" using the "net earnings" from the sale of "St. Lawrence County Economic Development Power," the value of which is estimated at two million dollars per year (\$2 million/year), and thereafter the allocation of "fund benefits" to "eligible applicants" for "eligible [economic development] projects," as such terms are defined in the NNYPPAA.
- Commencing no later than sixty (60) days after approval of the NYPA Board of Trustees, NYPA: (1) shall fund an economic development and strategic marketing and global search study conducted by McKinsey and Company or equivalent firm for the Task Force communities. This study shall require the active participation of local government, economic development, business, and civic leaders from the Task Force communities; and (2) thereafter, for a period of up to five (5) years, NYPA as part of that study will fund the services of McKinsey and Company or equivalent firm to assist the Task Force communities' local government, economic development, business, and civic leaders, as necessary and appropriate with a national and international marketing and search effort to identify and secure the development of business and industry in the Task Force communities. The firm will be selected in accordance with NYPA procurement procedures. Funding for this study will be up to \$5 million.
- Commencing after approval of the NYPA Board of Trustees and continuing for a period of three (3) years, (subject to annual ratification by the NYPA Board of Trustees) during Alcoa's current reduced purchases of "Preservation Power," NYPA shall reduce electric costs for businesses and farms in St. Lawrence, Jefferson and Franklin counties by a combined total of ten million dollars per year (\$10 million/yr.). Forty percent (40%) of the annual saving shall accrue to the benefit of St. Lawrence County businesses and farms.
- Commencing no later than sixty (60) days after approval by the NYPA Board of Trustees, NYPA shall initiate a BuildSmartNY energy efficiency and renewable energy savings program and grant fund for eligible Task Force communities government and school buildings in the amount of one and a half million dollars (\$1.5 million). NYPA will fund energy audits as needed for buildings participating in the energy efficiency and renewable energy savings program from the \$1.5 million grant fund. The target date to

complete the NYPA-funded audits is within three (3) years of NYPA Board approval, and the target date to complete any recommended and qualifying installations or upgrades is within seven (7) years of NYPA Board approval. The buildings eligible to participate in the energy efficiency and renewable energy savings program are identified in Exhibit 2 of the LGTF correspondence of December 8, 2014. Following completion and review of the NYPA-funded audit, qualifying installations or upgrades identified by the audit shall be eligible for additional funding from the existing NYPA efficiency and renewable energy savings program and grant fund. An installation or upgrade shall be eligible if it provides for no- or low-cost operational improvements, retro commissioning, capital energy efficiency retrofits, on-site renewable high efficiency, combined heat and power, renewable energy or other measures identified by the NYPA central management and implementation team that are otherwise consistent with the Executive Order 88 BuildsmartNY guidelines.

- Commencing with the completion of NYPA's current on-going study and evaluation of emergency response capabilities at each of NYPA's existing projects and facilities or Approval by NYPA's Board of Trustees whichever comes later, NYPA shall provide, funding and support that is appropriate and consistent with the results of the aforementioned study for emergency response infrastructure and services to: (1) Massena Memorial Hospital, with respect to emergency room services; (2) the Louisville Company #2, Massena and Waddington fire departments; (3) the Massena and Waddington rescue squads; and (4) the St Lawrence County Hazardous Materials Response Team and Dive Team. The level of funding for the capital improvements and services will be determined by the study.
- By the end of calendar year 2015 NYPA will: (1) (a) evaluate the appropriate changes to the Iroquois Dam road located in the Town of Waddington, New York so as to allow use and passage by emergency vehicles and authorized users of the adjoining lands, and move to implement said changes as mutually agreed by the Town and NYPA; and (2) complete all agreed to and necessary improvements to the emergency access road for the community located on Wilson Hill Island and to be located on the dike separating the east and west pools of the Wilson Hill Wildlife Management Area, including: paving, 24-foot wide emergency access road atop this structure to connect the west end of Wilson Hill Island with the mainland; openings in guard rails along both shoulders will be included to assure access to dikes for maintenance purposes; crest elevation of the new dike and roadway will be at elevation 245 feet (IGLD 1955); access to both ends of the road will be controlled by a gate and automatic control device that will facilitate access to the road by emergency vehicles; DEC and the Town of Louisville will be consulted

relative to the control device to be installed; and (3) provide materials for paving projects at Leishman's Point Road and Sucker Brook Overlook.

- NYPA will work with the LGTF communities to identify roads that are used predominately to service and access NYPA facilities. NYPA and the LGTF communities agree that the list of identified roads will evolve over time depending on development patterns and change of use and will adjust the list to reflect the roads used predominately to service and access NYPA facilities. NYPA will provide annual support for the maintenance of the identified roads in an amount not to exceed the annual average cost per mile for the maintenance of other town roads in the communities.
- After approval by the NYPA Board of Trustees, NYPA will hire an independent Recreational Facility Planner before the formal recreational assessment is conducted to develop a suite of proposed recreational improvements that are consistent with the interests expressed by the LGTF. These would be facilities specifically targeted toward increasing recreational boating tourism (including those traveling from Canada or outside the region) and fishing tournaments. Other recreational improvements to be considered in the study will include docking facilities (including year round docking facilities), trails for walking and biking (including trails from Barnhart Island to the Village of Waddington and thereafter along River Road and around Leishman's Point), facilities (*e.g.*, showers, wash rooms, rest rooms, etc.) necessary to support boating tourists and fishing tournaments; access to and recreational use of Ogden Island and all other islands located within the Project Boundary (docking facilities, trails, camping facilities, potential access by roped ferry, etc.) and the need for winter sport recreational activities and the possible need for an indoor facility to support existing and projected demand for such activities.

NYPA and LGTF will work with the consultant to develop this integrated list of projects. LGTF and NYPA will review and comment on the plan and the resulting conceptual facility designs. There will be mutual agreement on the list. NYPA will include this integrated list of facilities into its recreational assessment and incorporate the recreational assessment into its Recreational Use Report (RUR). The list of proposed facilities will include trails and facilities to support fishing tournaments as supported by the assessment. NYPA will take the lead in working with DEC, USFWS, COE and DOS so as to maximize regulatory cooperation. NYPA will incorporate this plan with any modifications resulting from the 2015 RUR into a proposal to FERC to modify the Project Recreational Plan. The RUR and the application to modify the Project Recreation Plan

will be filed simultaneously in 2015. NYPA will implement the plan after FERC approval. NYPA commits up to \$7.5 million for this work.

- NYPA will work with the LGTF, DEC, USFWS and clubs that currently obtaining walleye eggs from DEC to continue the current level of fish hatchery work that is being completed on the St. Lawrence River. In addition, NYPA will work with the same parties to evaluate the potential for establishing imprinted stock in the upstream tributaries of the St. Lawrence River to enhance walleye spawning in these tributaries. The work or research necessary to support this effort may qualify for funding from the Fish Enhancement, Mitigation and Research Fund (“FEMRF”), the Future Habitat Improvement Project Fund and/or the St. Lawrence River Research and Education Fund (“SLRREF”). In the event that tributary stocking proves unsuccessful, a study will be conducted to evaluate the efficacy of a conventional fish hatchery to increase the walleye population.
- Within twenty (20) days of NYPA Board approval, NYPA shall pay \$286,000 to the Task Force for monies due under the terms of the 2002 Relicensing Settlement Agreement (RSA). The High River Flow Adjustment program established by the 2002 RSA will otherwise continue for the term of the Agreement and NYPA shall adopt and apply the Task Force’s calculation methodology for determining when High River Flow Adjustment payments are required under the terms of the 2002 RSA.
- Within 90 days of approval by the NYPA Board of Trustees, NYPA shall provide the Town of Louisville and the Town of Waddington with an update of the status of each parcel removed from the Project Boundary based on the terms of the 2003 FERC license renewal that has not yet been transferred from NYPA to the subject Town or a third-party. NYPA thereafter shall work cooperatively with each Town toward resolving any impediments to a transfer or otherwise manage the subject parcels. With respect to each already transferred parcel, if requested, NYPA shall provide each Town with available information on site boundaries and the location of easements.
- NYPA shall continue the Adjacent Landowner Shoreline Stabilization Program (“ALSP”), without imposing limitation on the length or cost of any individual project. NYPA shall fund the ALSP to a level of \$1.75 million. Approximately \$1 million of this funding will come from unused monies currently allocated for shoreline stabilization pursuant to the current FERC-approved shoreline stabilization plan. FERC will need to approve the change in the shoreline stabilization plan. The ALSP shall be the subject of further review by the Parties and any mutual agreement reached at that time during the second

10-year review. In return for NYPA continuing the ALSP, the Task Force will support NYPA in any application or filing made with FERC intended to terminate any obligation under the terms of the FERC license and existing implementation plan other than the continuation of the ALSP program.

- Commencing nine months after approval by the NYPA Board of Trustees, NYPA and the Task Force shall meet annually to review the progress NYPA and the LGTF have made in implementing the items listed above.