

February 26, 2015

MEMORANDUM TO THE TRUSTEES

FROM THE PRESIDENT and CHIEF EXECUTIVE OFFICER

**SUBJECT: Release of Funds in Support of the Northern
New York Power Proceeds Allocation Act**

SUMMARY

The Trustees are requested to approve the release of funds, of up to \$3.0 million, into the Northern New York Economic Development Fund representing “net earnings” from the sale of unallocated St. Lawrence County Economic Development Power into the wholesale energy market for the period December 29, 2014 through December 31, 2015, as authorized by Chapter 545 of the Laws of 2014.

BACKGROUND

1. **Program Structure**

On December 29, 2014, Governor Cuomo signed into law the Northern New York Power Proceeds Allocation Act (the “Act”) which creates a program intended to support economic development by providing financial support for eligible economic development projects located, or proposed to be located, in St. Lawrence County by eligible applicants. The Act is similar to the Western New York Power Proceeds Allocation Act which was enacted in 2012.

In summary, the program will be administered by the Authority, with assistance from the five-member Northern New York Power Proceeds Allocation Board (“NNYPPAB”) which the Act creates. The NNYPPAB, whose members are appointed by the Governor, is authorized to solicit applications from “eligible applicants” for financial assistance known as “fund benefits” to support “eligible projects;” evaluate applications based on eligibility requirements and applicable criteria; and make recommendations to the Trustees for awards of fund benefits. The Trustees are authorized to consider whether to make awards of fund benefits to support eligible projects that are recommended by the NNYPPAB.

The Act defines “eligible applicant” as a private business, including a not-for-profit corporation. “Eligible projects” are defined as economic development projects that are or would be physically located within St. Lawrence County that will support the growth of business in St. Lawrence County and thereby lead to the creation or maintenance of jobs and tax revenues for the state and local governments. Eligible projects may include capital investments in buildings, equipment, and associated infrastructure (collectively, “infrastructure”) owned by an eligible

applicant for fund benefits; transportation projects under state or federally approved plans; the acquisition of land needed for infrastructure; research and development where the results of such research and development will directly benefit New York State; support for tourism and marketing and advertising efforts for St. Lawrence County tourism and business; and energy-related projects. Eligible projects do not include, and fund benefits may not be used for, public interest advertising or advocacy; lobbying; the support or opposition of any candidate for public office; the support or opposition to any public issue; legal fees related to litigation of any kind; expenses related to administrative proceedings before state or local agencies; or retail businesses as defined by NNYPPAB, including without limitation, sports venues, gaming and gambling or entertainment-related establishments, residential properties, or places of overnight accommodation.

Applications will be evaluated using the following criteria specified in the Act:

1. whether the eligible project would occur in the absence of an award of fund benefits;
2. the extent to which an award of fund benefits will result in new capital investment in the State by the eligible applicant and the extent of such investment;
3. other assistance the eligible applicant may receive to support the eligible project;
4. the type and cost of buildings, equipment and facilities to be constructed, enlarged or installed if the eligible applicant were to receive an award of fund benefits;
5. the eligible applicant's payroll, salaries, benefits and number of jobs at the eligible project for which an award of fund benefits is requested;
6. the number of jobs that will be created or retained within St. Lawrence County and any other parts of the State in relation to the requested award of fund benefits, and the extent to which the eligible applicant will agree to commit to creating or retaining such jobs as a condition to receiving an award of fund benefits;
7. whether the eligible applicant is at risk of closing or curtailing facilities or operations in St. Lawrence County and other parts of the State, relocating facilities or operations out of St. Lawrence County and other parts of the State, or losing a significant number of jobs in St. Lawrence County and other parts of the State, in the absence of an award of fund benefits;
8. the significance of the eligible project that would receive an award of fund benefits to the economy of the area in which such eligible project is located; and
9. for new, expanded and/or rehabilitated facilities, the extent to which the eligible applicant will commit to implement or otherwise make tangible investments in energy efficiency measures as a condition to receiving an award of fund benefits.

The Act provides that the NNYPPAB shall also consider the extent to which an award of fund benefits would be consistent with the strategies and priorities of any Regional Economic Development Council having responsibility for the region in which the eligible project would be located, and authorizes the NNYPPAB to solicit the views of organizations that have an interest in economic development in St. Lawrence County regarding such matters as proposed funding strategies and priorities, and applications for fund benefits.

The Act authorizes the Authority to provide staff and other services to the NNYPPAB. Over the next few months, NYPA staff will be working on preparations for implementation of the program, including drafting program-related documents for adoption by the NNYPPAB once it is constituted.

2. Program Funding

The program is to be funded by “net earnings” from the sale of unallocated St. Lawrence County Economic Development Power (“SLCEDP”). SLCEDP consists of up to 20 MW of hydropower from the Authority’s St. Lawrence/FDR Power Project which the Authority has made available for sale to the Town of Massena Electric Department (“MED”) for MED to sub-allocate for economic development purposes in accordance with a contract between the parties entered into in 2012 entitled “Agreement Governing the Sale of St. Lawrence-FDR Project Power and Energy to the Town of Massena Electric Department for Economic Development Purposes” (the “Authority-TMED Contract”). The Act defines “net earnings” as the aggregate excess of revenues received by the Authority from the sale of energy associated with SLCEDP by the Authority in the wholesale energy market over what revenues would have been received had such energy been sold to MED on a firm basis under the terms of the Authority-MED contract. For the first five years after enactment, the amount of SLCEDP that may be used by the Authority to generate net earnings may not exceed the lesser of 20 MW or the amount of SLCEDP that has not been allocated by the Authority under the Authority-MED contract for sub-allocations. Thereafter, the amount of SLCEDP that may be used by the Authority to generate net earnings may not exceed the lesser of 10 MW or the amount of SLCEDP that has not been allocated under the Authority-MED contract for sub-allocations.

The Act also authorizes the Authority to create and maintain a fund known as the Northern New York Economic Development Fund (the “NNYEDF”), and deposit net earnings into the NNYEDF as determined to be feasible and advisable by the Trustees. The NNYEDF will be a separate fund residing within the Authority’s Operating Fund.

DISCUSSION

The Authority is requested, from time to time, to provide financial support to the State or for various other State programs. Any such transfer of funds must (1) be authorized by the Legislature, (2) be approved by the Trustees “as feasible and advisable,” and (3) satisfy the requirements of the Authority’s General Resolution Authorizing Revenue Obligations, dated February 24, 1998, as amended and supplemented (“Bond Resolution”). Further, as set forth in the Trustees’ Policy Statement dated May 24, 2011, a debt service coverage ratio of 2.0 shall be used as a reference point in considering any such payments or transfers.

The Bond Resolution's requirements to withdraw monies "free and clear of the lien and pledge created by the Bond Resolution" are such that withdrawals (a) must be for a "lawful corporate purpose as determined by the Authority," and (b) the Authority must determine, taking into account, among other considerations, anticipated future receipt of revenues or other moneys constituting part of the Trust Estate, that the funds to be so withdrawn are not needed for (i) payment of reasonable and necessary operating expenses, (ii) an Operating Fund reserve for working capital, emergency repairs or replacements, major renewals or for retirement from service, decommissioning or disposal of facilities, (iii) payment of, or accumulation of a reserve for payment of, interest and principal on senior debt, or (iv) payment of interest and principal on subordinate debt.

The date for calculating net earnings that are eligible for deposit into the NNYEDF is December 29, 2014, the date the Act became effective. Based on projected unallocated SLCEDP and projected wholesale energy prices during the period December 29, 2014 through December 31, 2015, staff is seeking authorization to deposit up to \$3.0 million in net earnings into the NNYEDF, to the extent such amount of net earnings becomes available during this timeframe. Staff expects that net earnings would be deposited into the NNYEDF on a quarterly basis.

Staff has reviewed the effects of a transfer of up to \$3.0 million into the NNYEDF on the Authority's projected financial position and reserve requirements. In addition, in accordance with the Board's Policy Statement, staff calculated the impact of this transfer on the Authority's debt service coverage ratio and determined it would not fall below the 2.0 reference point. Given the current financial condition of the Authority, its estimated future revenues, operating expenses, debt service and reserve requirements, staff is of the view that it will be feasible for the Authority to make the deposit of up to \$3.0 million over the course of the stated time period.

FISCAL INFORMATION

Staff has determined that sufficient funds are available to provide up to \$3.0 million for deposit into the NNYEDF for the period December 29, 2014 through December 31, 2015, and that such Authority funds are not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's Bond Resolution. Authorization for the deposit of net earnings into the NNYEDF for periods beyond December 31, 2015 will be requested of the Trustees at a later date.

RECOMMENDATION

The Treasurer recommends that the Trustees affirm the deposit of up to \$3.0 million into the Northern New York Power Proceeds Allocation Board for the period December 29, 2014 through December 31, 2015 is feasible and advisable, and authorize such deposit to the extent such amount of net earnings is generated during this timeframe.

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 Trustees hereby authorize the release of up to \$3.0 million from the Operating Fund to the Northern New York Economic Development Fund (“NNYEDF”) for the period from December 29, 2014 through December 31, 2015, to the extent such amount of net earnings is generated during this timeframe, as authorized by Chapter 545 of the Laws of 2014 (“Chapter 545”) and as discussed in the foregoing memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, That the amount of up to \$3.0 million to be released to the NNYEDF for the purposes authorized by Chapter 545 described in the foregoing resolution is 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 as a condition to making the releases specified in the foregoing resolutions, on the day of such payment the Treasurer or the Deputy Treasurer shall certify that such monies are not then 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, the Executive Vice President and General Counsel, the Executive Vice President and Chief Financial Officer, the Corporate Secretary, the Treasurer and all other officers of the Authority be, and each of them hereby is, authorized and directed, for and

in the name and on behalf of the Authority, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents that they, or any of them, may deem necessary or advisable to effectuate the foregoing resolutions, subject to approval as to the form thereof by the Executive Vice President and General Counsel.