NEW YORK STATE OF OPPORTUNITY. | NY Power Authority

Memorandum

Date: July 30, 2015

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: **Annual Compliance Review – Expansion Power, Replacement Power, and Preservation Power Programs**

SUMMARY

Authority Staff has conducted annual compliance review of customers in Western New York receiving hydropower under the Expansion Power ("EP") and Replacement Power ("RP") Programs in Western New York, and customers in Northern New York receiving Preservation Power ("PP") (collectively, "Hydropower"), covering the reporting period of January 2014 through December 2014 (the "Reporting Period"). The compliance review examined contract compliance in 3 areas: (1) job retention; (2) power utilization; and (3) capital investment. As provided for in each customer's contract, these customers began submitting their compliance reports to the Authority in February 2015.

The purpose of this memorandum is to inform the Trustees of the results of the compliance review. In addition, the Trustees are asked to authorize the reduction of hydropower allocations for specific customers who have failed to meet job retention, capital investment, or power utilization commitments. As detailed below, the underlying Hydropower contracts require customers to achieve at least a 90% compliance rate in the three commitment areas noted. At this time, Authority Staff is recommending enforcement of the contract commitments for specific customers that have an allocation of greater than 100 kilowatts ("kW") of Hydropower who have failed to achieve at least a 75% compliance level for job retention commitments, capital investment commitments, power utilization commitments, or a combination of these commitments. Additionally, in view of potential impacts on such customers from Hydropower allocation reductions, Staff recommends that the compliance rate of these customers be temporarily adjusted to a 75% threshold. As discussed below, this approach is consistent with (i) the sort of enforcement discretion the Authority has exercised in the past, and (ii) the approach Empire State Development ("ESD") has used for analogous economic development programs.

In summary:

(1) As described in Exhibit "A", the compliance level of each of the 8 Hydropower customers listed fell below 75% of the relevant contractual commitment for jobs for the Reporting Period. Staff recommends that the contract demands and Hydropower allocations for each such customer be reduced to the amounts indicated on Exhibit "A." In addition, Staff recommends that the Authority be authorized to adjust the job commitments for these customers as indicated on Exhibit "A" to reflect the reduced contract demands and Hydropower allocations.

(2) As described in Exhibit "B", the compliance level of each of the 7 Hydropower customers listed on fell below 75% of the relevant power utilization commitment. Staff recommends that the contract demands and Hydropower allocations for each such customer be reduced to the amounts indicated on Exhibit "B." In addition, Staff

recommends that the Authority be authorized to adjust job commitments and capital investment commitments for these customers as indicated on Exhibit "B" to reflect the reduced contract demands and Hydropower allocations.

(3) As described in Exhibit "C", the compliance level of each of the 4 Hydropower customers listed fell below 75% of the relevant contractual commitment for capital investment. Staff recommends that the contract demands and Hydropower allocations for these customers be reduced to the amounts indicated on Exhibit "C." In addition, Staff recommends that the Authority be authorized to adjust the job and/or capital investment commitments for these customers as indicated on Exhibit "C" to reflect the reduced contract demands and Hydropower allocations.

Staff may return to the Board at a later time for additional compliance reporting and recommendations regarding these and other Hydropower customers.

<u>BACKGROUND</u>

In addition to the basic requirement to pay for electric service, Hydropower contracts typically provide for several "supplemental" commitments by the customer relating to (1) job creation and/or retention, (2) capital investment, and/or (3) power utilization (collectively, "Supplemental Commitments").

Each year Staff performs a review of all in-service Hydropower allocation contracts for compliance with Supplemental Commitments. In or around 2013, most RP and EP allocations began service under new contracts that were negotiated and approved by the Trustees in 2010, which require, among other commitments, annual capital investment commitments.

To facilitate compliance review and contract enforcement, nearly all Hydropower contracts require customers to report information on the Supplemental Commitments. Customers are required to report pertinent information no later than February 28 of each year for the prior 12-month reporting period from January through December.

As more specifically detailed in the Hydropower contracts, if a customer's report indicates that any of its Supplemental Commitments for the reporting period is below the compliance threshold of 90%, the Authority may take action against the customer, which may include reducing the customer's power allocation on a pro rata basis. Pro-rata reductions taken are rounded up to the nearest 50 kilowatts.

Compliance reviews in past years have focused primarily on employment levels. With the addition of capital investment commitments to Hydropower contracts, Staff has taken a more holistic approach to compliance review for the current Reporting Period. For example, if a customer is modestly deficient in one compliance area, but well above its commitment level in another, Staff will consider this factor, among others, when considering recommendations for possible enforcement action. As has always been the case, customers are given the opportunity to explain any extenuating circumstances they believe may have caused a compliance shortfall during the reporting year. Accordingly, Staff's analysis and the recommendations contained herein do not represent a "black and white" analysis, Rather, Staff has taken a "big picture" approach that includes, where reasonable, appropriate consideration of individual or unique circumstances affecting customers. Staff is also focusing more carefully on power utilization by Hydropower customers. Authority Hydropower is a valuable asset. A customer's failure to make use of an allocation as provided for in the Hydropower Contract can result in "idle" Hydropower being unavailable for sale to other businesses that are willing to make job, capital investment and other commitments in exchange for the opportunity to receive Hydropower. Finally, consistent with established practice, Staff considers the condition of the economy when considering whether to take compliance action and the approach that will be recommended.

DISCUSSION

1. Background

In 2014, the Authority had 125 Hydropower customers who collectively were receiving a total of 215 Hydropower allocations under the RP, EP, and PP programs. Of these, a total of 115 customers holding 199 allocations were required to report compliance levels for 2014. Of this number, the Authority received reports from 111 customers covering 191 Hydropower allocations. The contracts reviewed by Staff represent total power allocations of 1,085 megawatts and total employment commitments of 30,930 jobs. In the aggregate, these customers reported actual employment of 34,176 jobs. This represents 110% of the total job commitment for Hydropower customers reporting in 2014.

In addition, the reported aggregate capital investment spending during the Reporting Period totaled $376 million out of a total commitment level of $143 million. The results showed a majority of companies have met or exceeded their 90% compliance threshold for capital investments during this Reporting Period.

A total of 69 companies reviewed were found to be compliant in all three Supplemental Commitments. However, 42 companies were found not compliant for at least one Supplemental Commitment. The Authority did not receive compliance data from 4 companies, which include 2 companies that have closed.

Many of the non-compliant customers cited business/financial-related challenges, including the lingering effects of the 2008-2009 economic downturn, the loss of business due to a depressed industry/economy, and/or increased global competition. Some customers continue to indicate lingering effects of the recession created severe market disruption for businesses, as many producers scrambled for the lowest cost sourcing to remain viable. Businesses that placed a premium on manufacturing high quality products began losing to low cost competitors typically from China. Some companies have chosen to relocate operations.

Based on the Hydropower contract, the applicable tariff, and the Authority's regulations, the Authority has a number of options available to respond to a customer that is in breach of contractual obligations, including, for example, termination of the contract, suspension of electric service, and reduction of the amount of a customer's Hydropower allocation and contract demand.

As noted, the underlying Hydropower contracts require customers to achieve at least a 90% compliance rate with respect to the three Supplemental Commitment areas noted. At this time, Staff is recommending enforcement of the contract commitments for virtually all Hydropower customers who have failed to achieve at least a 75% compliance level for job retention commitments, capital investment commitments, power utilization commitments, or a combination of these commitments. (Where a customer was non-compliant in job commitments and one or more other commitments, Staff uniformly used the customer's job numbers to calculate recommended reductions in contract demands and allocations.) Staff is also recommending that the Authority be authorized to adjust job commitments and/or capital investment commitments proportionately as discussed below to reflect reduced Hydropower allocations and contract demands. Information relating to these matters is provided in Exhibits "A", "B", and "C".

For reasons discussed below, Staff is not recommending that compliance action be taken regarding the 3 Hydropower customers listed on Exhibit “D” whose reported data indicated that the customers failed to achieve at least a 75% percent compliance rate for the Supplemental Commitment indicated.

Staff intends to suspend electric service for the 2 customers listed on Exhibit “E” who have each failed to file compliance reports for the Reporting Period.

Finally, for reasons discussed below, Staff is not recommending that compliance action be taken at this time regarding the 1 Hydropower customer listed on Exhibit “F” whose reported data indicated that the customer failed to achieve at least a 75% percent compliance rate for the Supplemental Commitment indicated. Staff will return to the Board with a recommendation in September and final resolution by no later than year end.

A summary of all customers discussed on Exhibits “A” through “F” appears on the accompanying spread sheet designated as Exhibit “G”.

Staff intends to continue to monitor the compliance status of Hydropower customers falling between 90% and 75% compliance levels, and may return to the Board at a later time to report on and make recommendations concerning these customers or the customers who are the subject of the current compliance initiative.

Staff’s decision to not recommend compliance action for the current compliance period against customers who fell below a 90% compliance level, but who have met at least a 75% compliance level reflects the view that the State’s economy is on the mend, and therefore customers should be provided with additional time to meet their compliance obligations, and a reduction in the contract demand of such customers at this time could serve to impede their recovery. The Authority has exercised such enforcement discretion in the past in response to economic conditions. For example:

- Compliance action was suspended from 2001 through 2002 due to the events and impacts of the 9/11 attacks, when it was determined that businesses across the state were in severe financial distress.
- Compliance action was suspended from 2008 through 2010 as a direct result of the recession in the U.S. economy.
- Compliance action was suspended from 2012 through 2014 due to the impacts and economic recovery efforts relating to Tropical Storm Irene and Superstorm Sandy.

The recommended approach is also consistent with the approach ESD has used for analogous economic development programs.

2. Failure to Meet Supplemental Commitments – Action Requested

This section discusses specific compliance information concerning the Supplemental Commitments described. Some customers failed to achieve 75% compliance for more than one Supplemental Commitments. These customers are identified in more than one exhibit, but the recommended action for such customers in each instance takes account of multiple compliance violations.

a) Job Commitments

In total, 89 customers reviewed were found to be compliant, and 21 were found to be not compliant, for their respective employment commitment based on the 90% performance threshold in the Hydropower contract. Most of the customers that reported employment levels below the 90% commitment threshold offered an explanation and supporting information describing reasons for their non-compliance. Of these 21, each of the 8 customers listed on Exhibit A failed to achieve at least 75% compliance of its job commitment. The individual company circumstances vary, but generally customers indicated that changes in business models, market landscape, and/or competitive challenges have made it unlikely that the customers will meet employment commitments going forward.

Accordingly, Staff recommends that the Trustees approve reductions in the contract demands and Hydropower allocations for the 8 customers identified in Exhibit “A” who fell below a 75% compliance rate for their job, to the amounts indicated on Exhibit “A”. In addition, Staff recommends that the Trustees authorize the Authority to make reductions in the job commitments for these 8 customers to the amounts indicated on Exhibit “A” to reflect the reduction in the Hydropower allocations.

b) Power Utilization Commitments

Also referred to as the “use-it-or-lose-it” provision, Hydropower contracts require that the six highest monthly peak demands during the reporting year average at least 90% of the allocation. A total of 18 companies did not meet the power utilization commitment based on a 90% threshold, with many of these not using the full allocation for several years. Of this number, 7 customers listed on Exhibit “B” failed to meet at least 75% compliance with its power utilization commitment.

Accordingly, Staff recommends that the Trustees approve reductions in the contract demands and Hydropower allocations for the 7 customers identified in Exhibit “B” who are below a 75% compliance rate for their power utilization commitment to the amounts indicated on Exhibit “B”. In addition, Staff recommends that the Trustees authorize the Authority to make reductions in the job commitments for these customers to the amounts indicated on Exhibit “B” to reflect the reduction in the Hydropower allocations.

c) Capital Investment Commitments

Each of the customers listed in Exhibit “C” committed to make a capital investment in the facility that is receiving the Hydropower allocation, but did not meet its commitment. The compliance review showed that all but eight companies met or exceeded their 90% compliance threshold. Of this number, the 4 customers listed on Exhibit “C” failed to achieve a 75% compliance rate for their capital investment commitment.

Accordingly, Staff recommends that the Trustees approve reductions in the contract demands and Hydropower allocations for the customers identified in Exhibit “C” to the amounts indicated on Exhibit “C”. In addition, Staff recommends that the Trustees authorize the Authority to make reductions in the job and capital investment commitments for these customers as proposed in Exhibit “C” to reflect proposed reductions to their respective Hydropower allocations.

3. Other Compliance Activities – No Action Requested

The data reported by the first customer listed on Exhibit “D”, Tops Supermarkets, LLC, indicated that the customer failed to achieve at least a 75% compliance rate for power utilization. However, based on information received from the customer and its local utility, Staff has learned that accurate usage data may not have been collected due to a problem with the customer’s meter. Staff is expecting receipt of new data in the near future that may demonstrate that the customer is in compliance with its power utilization commitment.

Accordingly, Staff is not recommending any compliance action against this customer at this time.

The second customer listed on Exhibit “D”, Cliffstar, LLC, was deemed to be non-compliant for its capital investment commitment based on its reported information. However, because non-compliance fell just below the 75% compliance rate, the methodology used to calculate reduction of contract demand and allocation does not support in a reduction in this customer’s contract demand and allocation at this time.

The third customer listed in on Exhibit “D”, Confer Plastics, Inc., was initially determined to be non-compliant for its capital investment commitment based on reported information. However, subsequent discussions with the customer are suggesting that an error may have been made with respect to the obligations listed in the customer’s contract. Staff is still reviewing the matter and expects to renegotiate contract terms for this customer if an error is confirmed. Accordingly, Staff is not recommending compliance action at this time.

The 2 Hydropower customers identified in Exhibit “E” did not file a compliance report as required by their RNY Power contract. These companies were notified on numerous occasions of their obligation to file the report, but still failed to file the required report. Staff intends to suspend electric service for these customers. No action by the Trustees is required for this matter.

4. Ongoing Compliance Activities

The data reported by the customer listed on Exhibit “F”, Globe Metallurgical, Inc., indicated that this customer has failed to achieve at least a 75% compliance rate for job commitments. Staff is not recommending compliance action as to this customer at this time. Staff has completed its analysis of this customer’s situation and is currently working with other State agencies and key stakeholders to address impacts. Staff will come back to the Board with a recommendation in September and final resolution by no later than year end.

RECOMMENDATION

The Vice President, Marketing recommends that the Trustees:

(1) Authorize a reduction of the contract demands and Hydropower allocations for each of the customers identified in Exhibit “A” to the amount indicated on Exhibit “A”, and authorize the Authority to adjust job commitments and/or capital investment commitments for these customers as indicated on Exhibit “A” to reflect the reductions in the respective Hydropower allocations.

(2) Authorize a reduction of the contract demands and Hydropower allocations for each of the customers identified in Exhibit “B” to the amount indicated on Exhibit “B”, and authorize the Authority to adjust job commitments and/or capital investment commitments for these customers as indicated on Exhibit “B” to reflect the reductions in the respective Hydropower allocations.

(3) Authorize a reduction of the contract demands and Hydropower allocations for each of the customers identified in Exhibit “C” to the amount indicated on Exhibit “C”, and authorize the Authority to adjust job commitments and/or capital investment commitments for these customers as indicated on Exhibit “C” to reflect the reductions in the respective Hydropower allocations.

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 accept and approve the recommendations regarding the Annual Compliance Review for the Expansion Power, Replacement Power, and/or Preservation Power programs (collectively, "Hydropower") which began in February 2015 for the compliance period beginning in January 2014 and ending in December 2014; and be it further .

RESOLVED, That the Trustees hereby approve the reduction of Hydropower allocations and contract demands for each of the customers identified in Exhibit "A" to the amount indicated therein, and authorize the Authority to adjust job commitments and/or capital investment commitments for these customers proportionately as indicated on Exhibit "A" to reflect the reductions in the Hydropower allocations, as described in the foregoing memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, That the Trustees hereby approve the reduction of Hydropower allocations and contract demands for each of the customers identified in Exhibit "B" to the amount indicated therein, and authorize the Authority to adjust job commitments and/or capital investment commitments for these customers proportionately as indicated on Exhibit "B" to reflect the reductions in the Hydropower allocations, as described in the foregoing memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, That the Trustees hereby approve the reduction of Hydropower allocations and contract demands for each of the customers identified in Exhibit "C" to the amount indicated therein, and authorize the Authority to adjust job commitments and/or capital investment commitments for these customers proportionately as indicated on Exhibit "C" to reflect the reductions in the Hydropower allocations, as described in the foregoing memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, That the Chairman, 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.

EXHIBIT A

Non-Compliance with Job Commitments – Proposed Reductions in Contract Demands and Hydropower Allocations with Adjustments to Job Commitments

1. Ashland Advanced Materials (Niagara Falls, Niagara County)

Allocation:	3,500 kW of Replacement Power (“RP”)
Contract Demand:	2,200 kW of Replacement Power (“RP”)
Power Utilization:	96%
Capital Spending:	$559,668 or 373%
Job Commitment:	75 jobs
Jobs Reported:	27 jobs, or 36%

Background: Ashland Advanced Materials (“Ashland”) is a supplier of manufactured graphite products and ultra-high temperature heat treating services, providing products and services to renewable and green energy technology industries. The company historically has been highly dependent on the solar and sapphire markets. In 2014, the third year of required compliance reporting, the company came in at an average 27 employees, or 36% of its job commitment. This is an increase of 5 jobs from the previous reporting year 2013.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation to not less than 2,150 and contract demand to not less than 1,350 kW, and authorize an adjustment of the job commitment to not less than 46 jobs.*

2. Lockheed Martin Corporation (Niagara Falls, Niagara County)

Allocation:	250 kW of RP
Contract Demand:	250 kW of RP
Power Utilization:	100%
Capital Spending:	$530,000 or 237%
Job Commitment:	45 jobs
Jobs Reported:	28 jobs, or 62%

Background: Lockheed Martin Corporation (“Lockheed”) is a manufacturer of gravity gradiometer technology for the U. S. Navy and commercial use. Lockheed’s 2014 reported job number shows no change from the previous year’s average of 28 jobs. Lockheed stated it experienced a significant reduction in force caused by cuts in defense spending by the government and by softness in its commercial customer markets. New acquisitions may provide justification for hiring additional 2-3 employees this year and an additional 2-3 the following year. Lockheed captured additional business and increased its workforce through contract labor and direct hire. However, long range business plans indicate that employment levels will not be at the contractual commitment levels for a number of years.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 200 kW, and authorize an adjustment to the job commitment to not less than 39 jobs.*

3. Niagara LaSalle Corp. (Buffalo, Erie County)

Allocation:	1,400 kW of RP
Contract Demand:	1,400 kW of RP
Power Utilization:	95%
Capital Spending:	$149,019 or 116%
Job Commitment:	115 jobs
Jobs Reported:	75 jobs, or 65%

Background: Niagara LaSalle Corp. produces cold finished steel products. The company states that it continues to struggle to return to pre-2008 business levels. It indicates that it continues to make minor progress with business levels, siting foreign competition as a factor.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 1,300 kW, and authorize an adjustment of the job commitment to not less than 104 jobs.*

4. Hurtubise Tire, Inc. (North Tonawanda, Niagara County)

Allocation:	180 kW of RP
Contract Demand:	180 kW of RP
Power Utilization:	100%
Capital Spending:	$70,352 or 235%
Jobs Commitment:	18 jobs
Jobs Reported:	6 jobs, or 33%

Background: Hurtubise Tire, Inc. ("Hurtubise") provides truck tire re-capping and services. Hurtubise averaged 2 jobs less than the previous year 2013 reporting. The company has been unable to grow employment for the last three years averaging 8 employees and falling short of its job commitment target.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 100 kW, and authorize an adjustment to the job commitment to not less than 10 jobs.*

5. RHI Monofrax, LTD (Falconer, Chautauqua County)

Allocation:	2,082kW of EP
Contract Demand:	2,082kW of EP
Power Utilization:	98%
Capital Spending:	$1,991,051 or 287%
Job Commitment:	250 jobs
Jobs Reported:	135 jobs, or 54%

Background: RHI Monofrax, LTD manufactures ceramic castings. The company reports that it is struggling with foreign competition and is actively trying to win back customers.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and the contract demand to not less than 1,650 kW, and authorize an adjustment of the job commitment to not less than 197 jobs.*

6. Air Products Inc. - Medina (Medina, Orleans County)

Allocation: 1,000 kW of RP
Contract Demand: 1,000 kW of RP
Power Utilization: 25%
Capital Spending Commitment: $55,000
Capital Spending: $37,320 or 68%
Job Commitment: 20 jobs
Jobs Reported: 7 jobs, or 36%

Background: Air Products, Inc., formerly EPCO Carbondioxide Products, Inc. manufactures purified liquid carbon dioxide. It sells its product to both wholesalers and end users of carbon dioxide. Air Products' capital spending for the 2014 year that was budgeted for Medina, went to other CO2 facilities. Due to corporate reorganization, Air Products had to reduce employment at its Medina facility.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 600kW, and authorize an adjustment of the job commitment to not less than 12 jobs and capital investment commitment to not less than $33,000.*

7. Saint Gobain Structural Ceramics (Niagara Falls, Niagara County)

Allocation: 6,150 kW of RP
Contract Demand: 6,150 kW of RP
Power Utilization: 71%
Capital Spending: $1,385,318 or 104%
Job Commitment: 186 jobs
Jobs Reported: 137 jobs, or 74%

Background: Saint Gobain Structural Ceramics produces boron nitride powder and solids. The company reports that since its anticipated growth did not materialize, it was unable to meet job and energy usage this year. It anticipates that its armor business can return to full strength by second quarter 2015. The customer has historically failed to meet employment and power utilization commitments.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 6,050kW, and authorize an adjustment of the job commitment to not less than 184 jobs.*

8. Treibacher Schleifmittel North America, Inc. (Niagara Falls, Niagara County)

Allocation: 750 kW of RP
Contract Demand: 750 kW of RP
Power Utilization: 69%
Capital Spending: $234,236 or 111%
Job Commitment: 64 jobs
Jobs Reported: 31 jobs, or 48%

Background: Treibacher Schleifmittel North America, Inc. produces abrasive grains. The company indicates that it has not reached its commitments due to a slow market for its product, which is a commodity product and highly competitive in today's global marketplace. It is unable to provide a time frame as to when it will come into compliance.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 550kW, and authorize an adjustment of the job commitment to not less than 47 jobs.*

EXHIBIT B

Non-Compliance with Power Utilization Commitments – Proposed Reductions in Contract Demands and Hydropower Allocations with Adjustments to Job Commitments

1. CertainTeed Corporation (Buffalo, Erie County)

Allocation:	3,100 kW of EP
Contract Demand:	3,100 kW of EP
Power Utilization:	**71%**
Capital Spending:	$483,581 or 296%
Jobs Commitment**:**	113 jobs
Jobs Reported:	116 jobs, or 103%

Background: CertainTeed Corporation ("CertainTeed"), a wholly-owned subsidiary of the Saint–Gobain company, is a vinyl fence, deck and railing manufacturer. During the past 4 years, it has underutilized its allocation. The company described several reasons for non-compliance in power utilization including temporary production cut backs due to a shortage in a particular raw material which is a staple in its main component, resin. CertainTeed built up inventory during winter months which reduced its demand during summer, its busy season, with fewer production lines needed during the summer months. CertainTeed stated this lower demand utilization will be a normal course of business throughout 2015 and production will remain fairly constant.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to 3,000 kW, and authorize an adjustment of the job commitment to not less than 108 jobs.*

2. TAM Ceramics Group of NY, LLC (Niagara Falls, Niagara County)

Allocation:	7,000 kW of RP and 500 kW of EP
Contract Demand:	7,000 kW of RP and 500 kW of EP
Power Utilization:	72%
Capital Spending:	$1,257,792 or 520%
Job Commitment:	100 jobs
Jobs Reported:	78 jobs, or 78%

Background: TAM Ceramics Group of NY LLC develops and produces titanium products and zirconium ceramic powders. The company estimates that it is 12-18 months away from meeting its contractual commitment.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the RP allocation to not less than 6,800kW, authorize a reduction in the contract demand to not less than 6,800 kW, and authorize an adjustment to the cumulative job commitment to not less than 97 jobs.*

3. Washington Mills Electro Minerals Corp. (Niagara Falls, Niagara County)
Allocation: 9,700 kW of RP
Contract Demand: 9,700 kW of RP
Power Utilization: 55%
Capital Spending: $2,032,336 or 138%
Job Commitment: 107 jobs
Jobs Reported: 106 jobs, or 99%

Background: Washington Mills Electro Minerals Corp makes abrasive grains for sandpaper and grinding wheels. The customer has historically underutilized its allocation.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to 7,750kW, and authorize an adjustment to the job commitment to not less than 86 jobs.*

4. Citigroup Technology, Inc. (Getzville, Erie County)
Allocation: 1,000 kW of RP
Contract Demand: 1,000 kW of RP
Power Utilization: **71%**
Capital Spending Commitment: $7,500
Capital Spending: Not yet Required per Contract
Jobs Committed: 500 jobs
Jobs Reported: 1,180 jobs, or 680%

Background: Citigroup Technology, Inc. provides back office support from its Getzville facility for its financial services business. During the past 4 years, it has underutilized its allocation. Citigroup indicated that a moderately reduced allocation to the amount recommended would keep them in a position such that the hydropower will continue to provide needed economic benefits that are important at this location.-

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 750 kW, and authorize an adjustment to the job commitment to not less than 480 jobs.*

5. Air Products Inc. - Medina (Medina, Orleans County)
Allocation: 1,000 kW of RP
Contract Demand: 1,000 kW of RP
Power Utilization: 25%
Capital Spending Commitment: $55,000
Capital Spending: $37,320 or 68%
Job Commitment: 20 jobs
Jobs Reported: 7 jobs, or 36%

Background: Air Products, Inc., formerly EPCO Carbondioxide Products, Inc. manufactures purified liquid carbon dioxide. It sells its product to both wholesalers and end users of carbon dioxide. Air Products' capital spending for the 2014 year that was budgeted for Medina, went to other CO2 facilities. Due to corporate reorganization, Air Products had to reduce employment at its Medina facility.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 600kW, and authorize an adjustment of the job commitment to not less than 12 jobs and capital investment commitment to not less than $33,000.*

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Job Commitment:	186 jobs
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Background: Saint Gobain Structural Ceramics produces boron nitride powder and solids. The company reports that since its anticipated growth did not materialize, it was unable to meet job and energy usage this year. It anticipates that its armor business can return to full strength by second quarter 2015. The customer has historically failed to meet employment and power utilization commitments.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 6,050kW, and authorize an adjustment of the job commitment to not less than 184 jobs.*

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Background: Treibacher Schleifmittel North America, Inc. produces abrasive grains. The company indicates that it has not reached its commitments due to a slow market for its product, which is a commodity product and highly competitive in today's global marketplace. It is unable to provide a time frame as to when it will come into compliance.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to 550kW, and authorize an adjustment of the job commitment to not less than 47 jobs.*

EXHIBIT C

Non-Compliance with Capital Investment Commitments – Proposed Reductions in Contract Demands and Hydropower Allocations with Adjustments to Job Commitments and Capital Investment Commitments

1. Coyne Textile Services (Buffalo, Erie County)
Allocation: 250 kW of EP
Contract Demand: 250 kW of EP
Capital Spending Commitment: $141,185
Power Utilization: 100%
Capital Spending: $52,404 or 37%
Job Commitment: 52 jobs
Jobs Reported: 48 jobs, or 92%

Background: Coyne Textile Services, ("CTS") provides textile rental products (work uniforms, shop floor mats, etc.) and laundering services. In 2014, Coyne Textile reported an average of 48 jobs, or 4 more jobs than the previous year 2013 reporting. The company is moving in the direction of reduced spending and at this time does not foresee any additional increase in capital spending.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 150 kW, and authorize an adjustment of the job commitment to not less than 32 jobs and capital investment commitment to not less than $87,699.*

2. Rosina Food Products, Inc.-Cheektowaga (Buffalo, Erie County)
Allocation: 600 kW of EP
Contract Demand: 600 kW of EP
Power Utilization: 100%
Capital Spending Commitment: $1,360,953
Capital Spending: $476,343 or 35%
Job Commitment: 235 jobs
Jobs Reported: 255 jobs or 109%

Background: Rosina Food Products, Inc. manufactures frozen Italian food specialties. The company reports the significant increase in commodity prices, particularly pork, as the primary reason for poor results in 2014. The company also underwent a debt and financing restructuring in 2014 that resulted in very low levels of capital available for investment in the plant.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 350 kW, and authorize an adjustment of the job commitment to not less than 141 jobs and capital investment commitment to not less than $816,581.*

3. Precision Electro Minerals Company (Niagara Falls, Niagara County)
Allocation: 800 kW of RP
Contract Demand: 800 kW of RP
Power Utilization: 100%
Capital Spending Commitment: $116,836
Capital Spending: $18,933 or 16%

Job Commitment: 24 jobs
Jobs Reported: 20 jobs or 83%

Background: Precision Electro Minerals Company produces fused silica for precision casting applications such as jet engines, medical inserts and automotive components.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 350 kW, and authorize an adjustment to the job commitment to not less than 10 jobs and capital investment commitment to not less than $48,142.*

4. Air Products Inc. - Medina (Medina, Orleans County)

Allocation: 1,000 kW of RP
Contract Demand: 1,000 kW of RP
Power Utilization: 25%
Capital Spending Commitment: $55,000
Capital Spending: $37,320 or 68%
Job Commitment: 20 jobs
Jobs Reported: 7 jobs, or 36%

Background: Air Products, Inc., formerly EPCO Carbondioxide Products, Inc. manufactures purified liquid carbon dioxide. It sells its product to both wholesalers and end users of carbon dioxide. Air Products' capital spending for the 2014 year that was budgeted for Medina, went to other CO2 facilities. Due to corporate reorganization, Air Products had to reduce employment at its Medina facility.

Recommendation: *Staff recommends that the Trustees authorize a reduction in the allocation and contract demand to not less than 600kW, and authorize an adjustment of the job commitment to not less than 12 jobs and capital investment commitment to not less than $33,000.*

EXHIBIT D

Reported Non-Compliance with Commitments – No Action Recommended

1. Tops Market, LLC - Cheektowaga (Cheektowaga, Erie County)

Allocation:	300kW of EP
Contract Demand:	300kW of EP
Power Utilization:	70%
Capital Spending:	$274,756 or 734%
Job Commitment:	50 jobs
Jobs Reported:	56 jobs, or 112%

Background: Tops Market, LLC is a grocery distribution center.
Recommendation: *Staff recommends no action at this time.*

2. Cliffstar, LLC (Dunkirk, Chautauqua County)

Allocation:	500 kW of EP
Contract Demand:	500 kW of EP
Power Utilization:	94%
Capital Spending	$2,313,676 or 72%
Job Commitment:	630 jobs
Jobs Reported:	489 jobs, or 78%

Background: Cliffstar, LLC is a private-label beverage manufacturer that was purchased by Cott Incorporated in 2010. Since then the former Cliffstar corporate office was consolidated to the Cott corporate headquarters in Tampa, Florida, negatively affecting the Dunkirk campus headcount.

Recommendation: *Staff recommends no action at this time.*

3. Confer Plastics, Inc. (North Tonawanda, Niagara County)

Allocation:	300 kW of RP
Contract Demand:	300 kW of RP
Power Utilization:	100%
Capital Spending:	$116,718 or 22%
Job Commitment:	120 jobs
Jobs Reported:	169 jobs, or 141%

Background: Confer Plastics Inc. manufactures above-ground pool ladders and accessories.
Recommendation: *Staff recommends no action at this time.*

EXHIBIT E

Non-Compliance with Reporting Requirement – Allocations to be Suspended

1. Fresenius Kabi USA LLC (Grand Island, Erie County)

Allocation: 2,000 kW of RP
Contract Demand: 2,000 kW of RP
Power Utilization: 0%
Capital Spending Commitment: $1,135,955
Capital Spending: $0.0 or 0% of commitment
Job Commitment: 526 jobs
Jobs Reported: 0 jobs, or 0% of commitment

Background: Fresenius Kabi USA LLC is a producer of Pharmaceuticals. It did not submit a 2014 compliance report.

2. Stollberg, Inc. (Niagara Falls, Niagara County)

Allocation: 300 kW of EP
Contract Demand: 300 kW of EP
Power Utilization: 0%
Capital Spending Commitment: $165,500
Capital Spending: $0.0 or 0%
Job Commitment: 71 jobs
Jobs Reported: 0 jobs, or 0% of commitment

Background: Stollberg, Inc. makes castings for the steel industry. It did not submit its year 2013 hydropower compliance report until September 2014, and did not provide any explanation for its capital spending shortfall. Additionally, it did not submit a 2014 compliance report.

EXHIBIT F

Ongoing Compliance Activities – No Action Recommended at This Time

4. Globe Metallurgical, Inc. (Niagara Falls, Niagara County)

Allocation:	7,353 kW of Expansion Power ("EP") and 32,647 kW of RP
Contract Demand:	7,353 kW of Expansion Power ("EP") and 32,647 kW of RP
Power Utilization:	98%
Capital Spending:	$3,028,604 or 90%
Job Commitment:	500 jobs
Jobs Reported:	105 jobs, or 21%

Background: Globe Metallurgical, Inc. ("Globe") manufactures silicon metal products at four U.S. facilities including Niagara Falls. In 2014, the second year of required compliance reporting, the company came in at an average of 21 jobs less than the previous year 2013 reporting.

Recommendation: *Staff is not recommending compliance action as to this customer at this time. Staff has completed its analysis of this customer's situation and is currently working with other State agencies and key stakeholders to address impacts. Staff will come back to the Board with a recommendation in September and final resolution by no later than year end.*

EXHIBIT G

ALLOCATIONS, JOB AND CAPITAL INVESTMENT COMMITMENTS TO BE REDUCED DUE TO JOBS NONCOMPLIANCE

Customer	Allocation (kW)	Employment Commitment (# of Jobs)	Jobs Reported	Jobs Compliance %	Revised Commitments		Reductions	
					kW	Jobs	kW	Jobs
Ashland Advanced Materials	3,500	75	27	36%	2,150	46	1,350	29
Lockheed Martin Corporation	250	45	28	62%	200	39	50	6
Niagara LaSalle Corp.	1,400	115	75	65%	1,300	104	100	11
Hurtubise Tire, Inc.	180	18	6	33%	100	10	80	8
RHI Monofrax	2,082	250	135	54%	1,650	197	432	53
Air Products, Inc. - Medina	1,000	20	7	35%	600	12	400	8
Saint Gobain Structural Ceramics	6,150	186	137	74%	6,050	184	100	2
Treibacher Schleifmittel North America, Inc.	750	64	31	48%	550	47	200	17
						TOTALS:	2,712	134

ALLOCATIONS, JOB AND CAPITAL INVESTMENT COMMITMENTS TO BE REDUCED DUE TO UTILIZATION NONCOMPLIANCE

Customer	Allocation (kW)	Employment Commitment (# of Jobs)	Usage Reported	Usage Compliance %	Revised Commitments		Reductions	
					kW	Jobs	kW	Jobs
CertainTeed Corporation	3,100	51	2,111	68%	3,000	46	100	5
TAM Ceramics Group of NY, LLC	7,000	100	5,295	76%	6,800	97	200	3
Washington Mills Electro Minerals Corp.	9,700	107	5,266	54%	7,750	87	1950	20
Citigroup Technology, Inc.	1,000	402	654	65%	750	382	250	20
Air Products, Inc. - Medina	1,000	20	250	25%	600	12	400	8
Saint Gobain Structural Ceramics	6,150	186	4,341	71%	6,050	184	100	2
Treibacher Schleifmittel North America, Inc.	750	64	520	69%	550	47	200	17
						TOTALS:	2,500	48

ALLOCATIONS, JOB AND CAPITAL INVESTMENT COMMITMENTS TO BE REDUCED DUE TO CAPITAL INVESTMENT NONCOMPLIANCE

Customer	Allocation (kW)	Employment Commitment (# of Jobs)	Capital Investment Commitment	Capital Investment Reported	Capital Investment Compliance %	Revised Commitments			Reductions		
						kW	Jobs	Capital Investment	kW	Jobs	Capital Investment
Coyne Textile Services	250	52	$141,185.00	$52,404.00	37%	150	32	$87,699.00	100	20	$53,486.00
Rosina Food Products, Inc. - Cheektowaga	600	235	$1,360,953.00	$476,343.00	35%	350	141	$816,581.00	250	94	$544,372.00
Precision Electro Minerals Company	800	24	$116,836.00	$18,933.00	16%	350	10	$48,142.00	450	14	$68,694.00
Air Products, Inc. - Medina	1,000	20	$55,000.00	$37,320.00	68%	600	12	$33,000.00	400	8	$22,000.00
								TOTALS:	800	128	$666,552.00

ALLOCATIONS AND JOB COMMITMENTS TO REMAIN THE SAME

Customer	Allocation (kW)	Employment Commitment (# of Jobs)	Capital Investment Commitment	Revised Commitments			Reductions		
				kW	Jobs	Capital Investment	kW	Jobs	Capital Investment
Tops Markets, LLC	146	185	$37,433.00	146	185	$37,433.00	0	0	0
Cliffstar, LLC	160	57	$3,222,333.00	160	57	$3,222,333.00	0	0	0
Confer Plastics, Inc.	130	20	$530,432.00	130	20	$530,432.00	0	0	0

ONGOING COMPLIANCE ACTIVITIES - NO ACTION RECOMMENED AT THIS TIME

Customer	Allocation (kW)	Employment Commitment (# of Jobs)	Capital Investment Commitment	Revised Commitments			Reductions		
				kW	Jobs	Capital Investment	kW	Jobs	Capital Investment
Globe Metallurgical, Inc.	40,000	500	$3,028,604.00	40,000	500	$3,028,604.00	0	0	0

ALLOCATIONS TO BE SUSPENDED

Customer	Allocation (kW)	Employment Commitment (# of Jobs)	Capital Investment Commitment	Revised Commitments			Reductions		
				kW	Jobs	Capital Investment	kW	Jobs	Capital Investment

Fresenius Kabi USA LLC	1,000	526	$1,135,955.00	1000	526	$1,135,955.00	0	0	0
Stollberg, Inc.	300	71	$165,500.00	300	71	$165,500.00	0	0	0

Total kW Reduction	6,012
Total Job Reduction	310
Total Capital Investment Reduction	$688,552.00