

Date: December 17, 2015

To: THE TRUSTEES

From: THE PRESIDENT and CHIEF EXECUTIVE OFFICER

Subject: Compliance Review – Globe Metallurgical, Inc.

SUMMARY

On July 30, 2015, Authority Staff presented the results of its compliance review for customers in the Expansion Power (“EP”), Replacement Power (“RP”) and Preservation Power (“PP”) (collectively, “Hydropower”) programs who were in service for the full twelve months of the reporting period of January 2014 through December 2014 (the “Reporting Period”). In summary, based on Staff’s recommendations the Trustees authorized a reduction in the contract demands and Hydropower allocations of customers who failed to achieve at least a 75% compliance level for job retention commitments, capital investment commitments, or power utilization commitments. At the time of this meeting, Staff was still considering the compliance status and possible compliance recommendations for Globe Metallurgical, Inc. (“Globe”).

The purpose of this memorandum is to inform the Trustees of the results of an audit of Globe that was conducted by Dannible & McKee, LLP, an independent auditing firm, after the July 30 Trustee meeting, and to make recommendations for compliance action regarding Globe.

Based on Staff’s review, the Trustees are asked to authorize a reduction in the contract demand and corresponding Hydropower allocations for Globe based on Globe’s failure to achieve at least a 75% compliance level of its job retention commitments, the same compliance threshold used for other Hydropower customers as authorized by the Trustees at the July 30 meeting. Specifically, Staff recommends the contract demand and Hydropower allocations of Globe be reduced to the amounts indicated on Exhibit “A.” In addition, Staff recommends the Trustees authorize the Authority to adjust the job commitment for Globe as indicated on Exhibit “A”.

BACKGROUND

As noted above, earlier this year in July, staff conducted its annual compliance review of customers in the EP, RP and PP Hydropower programs. The review examined contract compliance in three areas: (1) job retention; (2) power utilization; and (3) capital investment. Customer subject to compliance review began submitting their compliance reports to the Authority in February 2015.

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.

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 Hydropower allocations on a pro rata basis. Pro-rata reductions taken are rounded up to the nearest 50 kilowatts ("kW").

DISCUSSION

When Staff reported the results of its 2014 compliance review at the July 30 Trustee meeting, it was still considering Globe's circumstances, and recommendations for reduction of Globe's contract demand and Hydropower allocations in response to Globe's compliance report for 2014 indicating it had failed to meet its commitment to create and maintain 500 jobs in exchange for Hydropower allocations of 7,353 kW of EP and a 32,647 kW of RP allocation (the "Allocation"). A basis for the Allocation was a proposed plant expansion by Globe that was intended support the employment commitment. The expansion has not come to fruition.

Since that time, Staff retained an independent auditing firm, Dannible & McKee, LLP ("DM"), to conduct an audit of Globe's employment status. In summary, based on the results of the audit, and discussions with the Authority's internal audit department, we are able to reach the following conclusions:

- Globe reported 105.5 jobs for the 2014 compliance period (although the audit indicated Globe actually employed 101.1 jobs during this period).
- Globe reported 126 jobs for 2013 (although the audit indicated Globe actually employed 99.18 jobs during this period. Globe attributed the discrepancy to a clerical error).
- Globe has employed an average of approximately 100 employees in 2015.
- The facility expansion that was proposed to help support the job commitment has not occurred and there is no concrete timeline for such the expansion to proceed.
- No basis exists for Staff to conclude that any change in Globe's business model is planned that would result in a material increase in jobs at Globe's facility in the near term that would bring Globe into compliance with its job commitment.

Data collected as a result of the DM audit is attached to this memorandum in three separate pages produced as a result of the audit (#00-13PA, #00-14PA, #00-15PA) as Exhibit "B."

As detailed above, Hydropower contracts require customers to achieve at least a 90% compliance rate in the three commitment areas noted. Consistent with the compliance approach for other Hydropower customers authorized at the July 30, 2015 Trustee meeting, Staff is recommending compliance enforcement for Globe based on Globe's failure to achieve at least a 75% compliance level for its job creation and retention commitment.

As noted in Exhibit "A", the year-end monthly average number of employees reported by Globe in its 2014 compliance report was 105, or 21% of the Globe's Base Employment Level of 500 – Globe's Hydropower contract job commitment.

Accordingly, Staff recommends that the Trustees authorize a reduction in the contract demand and Hydropower Allocation for Globe to the amounts indicated on Exhibit "A". In addition, Staff recommends that the Trustee's authorize the Authority to adjust the job commitments for Globe as indicated on Exhibit "A".

While the reduction of Globe's contract demand and Hydropower Allocation may have the effect of increasing Globe's operating costs, we note that no compliance action was taken against Globe in 2013 although it was not compliant with its job commitment during the 2013 compliance period. Staff intends to implement a phased reduction of Globe's contract demand and Hydropower Allocation in three equal parts to occur on or about April 1, 2016, May 1, 2016 and June 1, 2016. Should Globe's expansion plans change, it can apply for additional hydropower to support the project.

RECOMMENDATION

The Senior Vice President – Economic Development and Energy Efficiency recommends that the Trustees authorize a reduction of the contract demand and Hydropower Allocation for Globe as set forth in Exhibit "A" to the amount indicated on Exhibit "A", and authorize the Authority to adjust the job commitment for Globe as indicated on Exhibit "A".

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 for the reasons described in the foregoing memorandum of the President and Chief Executive Officer (the "Memorandum") and Exhibits "A" and "B" thereto, the Trustees hereby approve the reduction of the contract demand and hydropower allocations for Globe Metallurgical, Inc. ("Globe") to the amounts indicated in Exhibit "A", and authorize the Authority to adjust job commitment for Globe as indicated on Exhibit "A"; 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. Globe Metallurgical, Inc. (Niagara Falls, Niagara County)

Allocation:	7,353 kilowatts (“kW”) of Expansion Power (“EP”) and 32,647 kW of Replacement Power (“RP”)
Contract Demand:	7,353 kW of 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.

The above-table reflects information reported by Globe for 2014, the calendar year for which compliance action is being recommended. The year-end monthly average number of employees reported by Globe for 2014 is 105, or 21% of the Base Employment Level of 500 (Globe’s contractual job commitment).

Recommendation: *Globe currently receives two allocations (7,353 kW of EP and 32,647 kW of RP) for a total hydropower allocation of 40,000 kW (the “Allocation”).*

Staff recommends that the Trustees authorize a reduction in the contract demand and Allocation by 21,600 kW, which would result in a revised contract demand and Allocation of not less than 18,400 kW.

Staff further recommends that Staff be authorized to reduce Globe’s job commitment by 400 jobs, which would result in a revised job commitment of not less than 100 jobs.

#00-13PA

**NEW YORK POWER AUTHORITY
AGREED UPON PROCEDURES PROGRAM**

CONTACT INFORMATION:

CUSTOMER NAME: **Globe Metallurgical, Inc.**

NYPA CUSTOMER #: **7617**

DATE: **11/12/2015**

TWELVE MONTH PERIOD: **January 2013 through December 2013**

PROGRAM: **Western New York (WNY) Hydropower Power Program**

LOCATION VISITED: **3807 Highland Ave.
Niagara Falls, NY 14305**

CONTACT NAME/TITLE: **Lee Payssa, Corp Direct of Human Resources
Michelle Mycek, Corporate Benefits Administrator**

TELEPHONE NUMBER: **716-278-6103**

EXPANSION POWER	7.353	MW
REPLACEMENT POWER	32.647	MW
TOTAL ALLOCATED POWER	40.000	MW

TOTAL COMMITTED JOBS: **500.00**

REQUIRED JOB RATIO: **90.0%**

TOTAL JOBS PER JOB REPORT: **126.00**

TOTAL JOBS PER D&M: **99.18**

PREPARED BY: **Alida Schillinger/
Alanna J Abreu**

REVIEWED BY: **Charla Roth/Peggy Rowe**

#00-14PA

**NEW YORK POWER AUTHORITY
AGREED UPON PROCEDURES PROGRAM**

CONTACT INFORMATION:

CUSTOMER NAME: **Globe Metallurgical, Inc.**

NYPA CUSTOMER #: **7617**

DATE: **11/12/2015**

TWELVE MONTH PERIOD: **January 2014 through December 2014**

PROGRAM: **Western New York (WNY) Hydropower Power Program**

LOCATION VISITED: **3807 Highland Ave.
Niagara Falls, NY 14305**

CONTACT NAME/TITLE: **Lee Payssa, Corp Direct of Human Resources
Michelle Mycek, Corporate Benefits Administrator**

TELEPHONE NUMBER: **716-278-6103**

EXPANSION POWER	7.353	MW
REPLACEMENT POWER	32.647	MW
TOTAL ALLOCATED POWER	40.000	MW

TOTAL COMMITTED JOBS: **500.00**

REQUIRED JOB RATIO: **90.0%**

TOTAL JOBS PER JOB REPORT: **105.50**

TOTAL JOBS PER D&M: **101.10**

PREPARED BY: **Alanna J Abreu**

REVIEWED BY: **Charla Roth/Peggy Rowe**

#00-15PA

**NEW YORK POWER AUTHORITY
AGREED UPON PROCEDURES PROGRAM**

CONTACT INFORMATION:

CUSTOMER NAME: **Globe Metallurgical, Inc.**

NYPA CUSTOMER #: **7617**

DATE: **11/12/2015**

TWELVE MONTH PERIOD: **January 2015 through September 2015**

PROGRAM: **Western New York (WNY) Hydropower Power Program**

LOCATION VISITED: **3807 Highland Ave.
Niagara Falls, NY 14305**

CONTACT NAME/TITLE: **Lee Payssa, Corp Direct of Human Resources
Michelle Mycek, Corporate Benefits Administrator**

TELEPHONE NUMBER: **716-278-6103**

EXPANSION POWER	7.353	MW
REPLACEMENT POWER	32.647	MW
TOTAL ALLOCATED POWER	40.000	MW

TOTAL COMMITTED JOBS: **500.00**

REQUIRED JOB RATIO: **90.0%**

TOTAL JOBS PER JOB REPORT: **N/A**

TOTAL JOBS PER D&M: **99.28**

PREPARED BY: **Alanna J Abreu**

REVIEWED BY: **Charla Roth/Peggy Rowe**