

5583--A

2013-2014 Regular Sessions

I N S E N A T E

May 22, 2013

Introduced by Sens. RITCHIE, GRIFFO -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public authorities law, in relation to authorizing unallocated power to be used for the specified purposes

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 1005 of the public authorities law is amended by
2 adding four undesignated paragraphs to be the thirteenth, fourteenth,
3 fifteenth and sixteenth undesignated paragraphs to read as follows:
4 THE AUTHORITY IS AUTHORIZED TO ALLOCATE UP TO TWENTY MEGAWATTS OF
5 POWER FROM THE SAINT LAWRENCE-FDR PROJECT HEREAFTER KNOWN AS "ST.
6 LAWRENCE COUNTY ECONOMIC DEVELOPMENT POWER" WHICH IS UNALLOCATED AS OF
7 THE EFFECTIVE DATE OF THIS PARAGRAPH, FOR SALE INTO THE WHOLESALE
8 MARKET, THE NET EARNINGS FROM WHICH AND SUCH OTHER FUNDS OF THE AUTHORI-
9 TY AS DEEMED FEASIBLE AND ADVISABLE BY THE TRUSTEES, SHALL BE USED FOR
10 PURPOSES OF THE ST. LAWRENCE RIVER VALLEY ECONOMIC DEVELOPMENT FUND
11 (HEREINAFTER REFERRED TO AS THE "SLRVED FUND"). SUCH PROCEEDS SHALL BE
12 DISBURSED UPON RECOMMENDATION OF THE ST. LAWRENCE RIVER VALLEY REDEVEL-
13 OPMENT DEVELOPMENT AGENCY AND/OR THE ST. LAWRENCE INDUSTRIAL DEVELOPMENT
14 AGENCY AND/OR THEIR SUCCESSORS (HEREINAFTER THE RVRDA ADVISORY GROUP)
15 PURSUANT TO THE FUND CONTEMPLATED IN THE AGREEMENT TO FUND THE ST.
16 LAWRENCE RIVER VALLEY REDEVELOPMENT DEVELOPMENT AGENCY DATED JUNE 2,
17 2010 BY AND BETWEEN THE POWER AUTHORITY OF THE STATE OF NEW YORK
18 (PASNY), THE ST. LAWRENCE COUNTY INDUSTRIAL DEVELOPMENT AGENCY LOCAL
19 DEVELOPMENT CORPORATION AND THE PASNY HOST COMMUNITIES ON THE ST.
20 LAWRENCE RIVER INCLUDING THE TOWNS OF WADDINGTON, LOUISVILLE, LISBON AND
21 MASSENA, THE VILLAGES OF WADDINGTON AND MASSENA AND THE COUNTY OF ST.
22 LAWRENCE. FOR PURPOSES OF THIS PARAGRAPH, THE TERM NET EARNINGS SHALL

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 MEAN THE DIFFERENCE BETWEEN THE POWER AUTHORITY'S COST-BASED HYDROELEC-
2 TRIC RATE FOR POWER AND ENERGY AND THE PREVAILING WHOLESALE MARKET PRICE
3 AT THE PROJECT IN THE MARKET ADMINISTERED BY THE NEW YORK INDEPENDENT
4 SYSTEM OPERATOR.

5 THE RVRDA ADVISORY GROUP SHALL SOLICIT APPLICATIONS FOR AND MAKE
6 RECOMMENDATIONS FOR APPROVAL OF SLRVED FUND BENEFITS MADE AVAILABLE
7 PURSUANT TO THIS PARAGRAPH. EACH APPLICATION FOR SLRVED FUND BENEFITS
8 SHALL BE EVALUATED UNDER CRITERIA ADOPTED BY THE RVRDA ADVISORY GROUP,
9 IN CONSULTATION WITH THE POWER AUTHORITY OF THE STATE OF NEW YORK, WHICH
10 CRITERIA SHALL BE DESIGNED TO PROMOTE ECONOMIC DEVELOPMENT, MAINTAIN AND
11 DEVELOP JOBS, AND ENCOURAGE NEW CAPITAL INVESTMENT WITHIN ST. LAWRENCE
12 COUNTY. SUCH CRITERIA SHALL ADDRESS BUT NEED NOT BE LIMITED TO: (A) THE
13 OVERALL ECONOMIC IMPACT OF THE APPLICANT IN TERMS OF THE NUMBER OF JOBS
14 TO BE CREATED OR RETAINED, AVERAGE ANNUAL PAYROLL, CAPITAL INVESTMENT
15 AND USE OF NEW YORK STATE SUPPLIERS; (B) THE LIKELIHOOD THAT IN THE
16 ABSENCE OF APPROVAL OF THE SLRVED FUND BENEFIT, THE APPLICANT WOULD
17 CLOSE, CONTRACT OR RELOCATE OUTSIDE THE STATE OF NEW YORK; (C) THE
18 APPLICANT'S COMPLIANCE WITH THE COMMITMENT TO RETAIN AND/OR CREATE JOBS
19 CONTAINED IN ITS PRIOR POWER CONTRACT WITH THE POWER AUTHORITY OF THE
20 STATE OF NEW YORK; (D) THE EXTENT TO WHICH A SLRVED FUND BENEFIT WILL
21 AFFECT THE OVERALL PRODUCTIVITY OR COMPETITIVENESS OF THE APPLICANT'S
22 BUSINESS AND ITS EXISTING EMPLOYMENT WITHIN THE STATE; AND (E) THE OVER-
23 ALL IMPACT OF THE PROJECT IN TERMS OF THE ECONOMIC VIABILITY OF IDENTI-
24 FIED ULTIMATE SITE OR USER INCLUDING THE PROJECT'S ABILITY TO INDUCE
25 ADDITIONAL COMMERCIAL ACTIVITY ON THE SITE, REVITALIZE AN URBAN AREA,
26 AND ITS COMPLIANCE WITH REGIONAL DEVELOPMENT PLANS.

27 APPLICATIONS FOR SLRVED FUND BENEFIT SHALL BE IN THE FORM AND CONTAIN
28 SUCH INFORMATION, EXHIBITS AND SUPPORTING DATA AS THE RVRDA ADVISORY
29 GROUP MAY PRESCRIBE. THE RVRDA ADVISORY GROUP SHALL REVIEW THE APPLICA-
30 TIONS RECEIVED AND SHALL DETERMINE THE APPLICATIONS WHICH BEST MEET THE
31 CRITERIA ESTABLISHED FOR THE BENEFITS PURSUANT TO THIS PARAGRAPH AND IT
32 SHALL RECOMMEND SUCH APPLICATIONS TO THE POWER AUTHORITY OF THE STATE OF
33 NEW YORK WITH SUCH TERMS AND CONDITIONS AS IT DEEMS APPROPRIATE. SUCH
34 TERMS AND CONDITIONS SHALL INCLUDE REASONABLE PROVISIONS PROVIDING FOR
35 THE PARTIAL OR COMPLETE WITHDRAWAL OF THE SLRVED FUND BENEFITS IN THE
36 EVENT THAT THE RECIPIENT FAILS TO MAINTAIN MUTUALLY AGREED UPON COMMIT-
37 MENTS THAT MAY INCLUDE, BUT ARE NOT LIMITED TO, INFRASTRUCTURE PROJECT
38 COMPLETION. RECOMMENDATION FOR APPROVAL OF A SLRVED FUND BENEFIT SHALL
39 QUALIFY AN APPLICANT TO RECEIVE A SLRVED FUND BENEFIT FROM THE POWER
40 AUTHORITY OF THE STATE OF NEW YORK PURSUANT TO THE TERMS AND CONDITIONS
41 OF THE RECOMMENDATION.

42 THE TRANSFER OF SLRVED FUND BENEFITS SHALL BE PROHIBITED UNLESS
43 SPECIFICALLY APPROVED BY THE RVRDA ADVISORY GROUP AS CONSISTENT WITH THE
44 CRITERIA ESTABLISHED PURSUANT TO THIS PARAGRAPH. ANY TRANSFER WHICH
45 OCCURS WITHOUT SUCH ADVISORY GROUP'S APPROVAL SHALL BE INVALID AND SUCH
46 TRANSFER MAY SUBJECT THE RECIPIENT TO REVOCATION OF ITS BENEFIT AND
47 MODIFICATION OR REVOCATION OF ITS CONTRACT.

48 S 2. The opening paragraph of subdivision 13 of section 1005 of the
49 public authorities law, as amended by chapter 645 of the laws of 2006,
50 is amended to read as follows:

51 Notwithstanding any other provision of law to the contrary but subject
52 to the terms and conditions of federal energy regulatory commission
53 licenses, to allocate or reallocate directly or by sale for resale, two
54 hundred fifty megawatts of firm Niagara project hydroelectric power as
55 "expansion power" and four hundred forty-five megawatts of firm Niagara
56 project hydroelectric power as "replacement power" to businesses within

1 the state located within thirty miles of the Niagara project, and four
2 hundred ninety megawatts of firm and interruptible power from the Saint
3 Lawrence-FDR project as "preservation power" sold to businesses located
4 within the counties of Jefferson, Saint Lawrence and Franklin, provided
5 that the amount of expansion power allocated to businesses in Chautauqua
6 county on January first, nineteen hundred eighty-seven shall continue to
7 be allocated in such county and, provided further that up to seventy
8 megawatts of replacement power, up to thirty-eight and six-tenths mega-
9 watts of preservation power from the Saint Lawrence-FDR project which is
10 relinquished or withdrawn after the effective date of chapter three
11 hundred thirteen of the laws of two thousand five which amended this
12 subdivision and, for the period ending on December thirty-first, two
13 thousand six, up to twenty megawatts of other power from the Saint
14 Lawrence-FDR project which is unallocated (HEREINAFTER "ST. LAWRENCE
15 COUNTY ECONOMIC DEVELOPMENT POWER" OR SLCEDP) as of the effective date
16 of chapter three hundred thirteen of the laws of two thousand five which
17 amended this subdivision, shall be allocated by the authority together
18 with such other funds of the authority as the trustees deem feasible and
19 advisable for energy cost savings benefits pursuant to the twelfth
20 undesignated paragraph of this section, AND FOR ST. LAWRENCE RIVER
21 VALLEY ECONOMIC DEVELOPMENT FUND BENEFITS PURSUANT TO THIS SECTION.
22 Provided, however, that the amount of replacement, preservation power,
23 or the additional twenty megawatts of Saint Lawrence-FDR power for the
24 period ending December thirty-first, two thousand six made available for
25 such purpose, used for energy cost savings benefits that are relin-
26 quished by or withdrawn from a recipient thereof shall be offered by the
27 authority proportionately for a period of six months for reallocation to
28 applicants who qualify respectively for replacement or preservation
29 power allocations as provided in this subdivision. If such power is not
30 allocated within such period it shall be allocated for the purpose of
31 energy cost savings benefits pursuant to [subdivision (h) of] section
32 one hundred eighty-three of the economic development law, EXCEPT TO THE
33 EXTENT USED TO FUND THE ST. LAWRENCE RIVER VALLEY ECONOMIC DEVELOPMENT
34 FUND. The authority shall negotiate contracts on reasonable terms and
35 conditions to renew or extend every permanent contract allocation of
36 expansion power in effect on the effective date of this subdivision and,
37 to the extent consistent with such contracts, the authority shall nego-
38 tiate contracts on reasonable terms and conditions to extend or renew
39 all other allocations or allotments of such power in effect on such
40 date. The authority shall negotiate contracts on reasonable terms and
41 conditions to renew or extend for a period of at least five years every
42 permanent contract allocation of replacement power in effect on the
43 effective date of chapter three hundred thirteen of the laws of two
44 thousand five which added this sentence and that would expire by its
45 terms on or before the end of the initial federal energy regulatory
46 commission license for the Niagara project; provided that, in negotiat-
47 ing the terms and conditions of such contracts, the authority may
48 consider a business' compliance with all current contractual obli-
49 gations, including employment and power usage commitments. Contracts
50 entered into pursuant to this subdivision shall contain reasonable
51 provisions providing for the partial or complete withdrawal of the power
52 in the event the recipient fails to maintain mutually agreed levels of
53 employment, investment, and power utilization. Expansion or replacement
54 power relinquished by businesses or withdrawn by the authority shall be
55 allocated directly or by sale for resale by the authority to businesses
56 within the state located within thirty miles of the Niagara project

1 provided, that the amount of power allocated to businesses in Chautauqua
2 county on January first, nineteen hundred eighty-seven shall be allo-
3 cated in such county. Preservation power that is relinquished by busi-
4 nesses or withdrawn by the authority shall be allocated directly or by
5 sale for resale by the authority within the counties of Jefferson, Saint
6 Lawrence and Franklin. ST. LAWRENCE COUNTY ECONOMIC DEVELOPMENT POWER
7 SHALL BE USED TO FUND THE SLRVED FUND PURSUANT TO THIS SECTION. Allo-
8 cations made pursuant to this paragraph shall be made in accordance with
9 criteria established by the trustees. Such criteria shall address the
10 expansion of industry and employment pursuant to paragraph (a) of this
11 subdivision and the revitalization of existing industry pursuant to
12 paragraph (b) of this subdivision. PRESERVATION POWER OR ST. LAWRENCE
13 COUNTY ECONOMIC DEVELOPMENT POWER RELINQUISHED OR WITHDRAWN OR CURRENTLY
14 NOT ACCESSED, AS SHALL BE DETERMINED BY THE TRUSTEES, SHALL BE ALLOCATED
15 FOR THE PURPOSES OF ST. LAWRENCE RIVER VALLEY ECONOMIC DEVELOPMENT FUND
16 BENEFITS PURSUANT TO THIS SECTION. PROCEEDS TO SUCH ST. LAWRENCE RIVER
17 VALLEY ECONOMIC DEVELOPMENT FUND SHALL NOT PRECLUDE THE AUTHORITY FROM
18 ALLOCATING EXPANSION OR REPLACEMENT POWER TO ELIGIBLE COMPANIES UNDER
19 THE PROVISIONS OF THIS SECTION.

20 S 3. This act shall take effect immediately.