

10053

I N A S S E M B L Y

March 1, 2010

Introduced by M. of A. CAHILL, DESTITO -- read once and referred to the Committee on Energy

AN ACT to amend the economic development law, chapter 316 of the laws of 1997 amending the public authorities law and other laws relating to the provision of low cost power to foster statewide economic development; and to amend chapter 645 of the laws of 2006 amending the economic development law and other laws relating to reauthorizing the New York power authority to make contributions to the general fund, in relation to extending the expiration of the power for jobs program and the energy cost savings benefits program; to amend the economic development law, in relation to the creation of the economic development power program; and to amend the public authorities law, in relation to energy audits as a condition for an award under the economic development power award

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

1 Section 1. Section 182 of the economic development law, as amended by
2 chapter 289 of the laws of 2000, is amended to read as follows:
3 S 182. The New York state economic development power allocation board.
4 There is hereby created a New York state economic development power
5 allocation board, which shall possess the powers and duties herein spec-
6 ified and all the powers necessary or proper to carry out the purposes
7 of this article. The board shall consist of four members, [two] ONE OF
8 WHOM SHALL BE THE PRESIDENT OF THE URBAN DEVELOPMENT CORPORATION AND ONE
9 of whom shall be appointed by the governor and one of whom shall be
10 appointed by the speaker of the assembly and one of whom shall be
11 appointed by the president pro tempore of the senate. Each member shall
12 be appointed for terms of three years or until a successor shall have
13 been named and qualified. The chairman shall be [designated by the
14 governor from amongst the members] THE PRESIDENT OF THE URBAN DEVELOP-
15 MENT CORPORATION. Three members shall constitute a quorum for the
16 purposes of organizing the board and conducting the business thereof;
17 and no actions of the board may be taken except upon the affirmative
18 vote of at least three members. Videoconferencing may be used for

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

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1 attendance and participation by members of the board. If videoconferenc-
2 ing is used the board shall provide an opportunity for the public to
3 attend, listen and observe at any site at which a member participates.
4 The public notice for the meeting shall inform the public that [vidio-
5 conferencing] VIDEOCONFERENCING will be used, identify the locations for
6 the meeting, and state that the public has the right to attend the meet-
7 ing at any of the locations. Members of the board, except those who are
8 employees or officers of the state, its authorities or agencies shall
9 not receive a salary or other compensation, but shall be allowed the
10 necessary and actual expenses incurred in the performance of duties
11 under this article.

12 S 2. Paragraphs 2 and 4 of subdivision (h) of section 183 of the
13 economic development law, as amended by chapter 217 of the laws of 2009,
14 are amended to read as follows:

15 2. During the period commencing on November first, two thousand five
16 and ending on [May fifteenth] DECEMBER THIRTY-FIRST, two thousand ten
17 eligible businesses shall only include customers served under the power
18 authority of the state of New York's high load factor, economic develop-
19 ment power and other business customers served by political subdivisions
20 of the state authorized by law to engage in the distribution of electric
21 power that were authorized to be served by the authority from the
22 authority's former James A. Fitzpatrick nuclear power plant as of the
23 effective date of this subdivision whose power prices may be subject to
24 increase before [May fifteenth] DECEMBER THIRTY-FIRST, two thousand ten.
25 Provided, however, that the total amount of megawatts of replacement and
26 preservation power which, due to the extension of the energy cost
27 savings benefits, are not relinquished by or withdrawn from a recipient
28 shall be deemed to be relinquished or withdrawn for purposes of offering
29 such megawatts by the authority for reallocation pursuant to subdivision
30 thirteen of section one thousand five of the public authorities law.
31 Provided, further, that for any such reallocation, the authority shall
32 maintain the same energy cost savings benefit level for all eligible
33 businesses using any available authority resources as deemed feasible
34 and advisable by the trustees pursuant to section seven of part U of
35 chapter fifty-nine of the laws of two thousand six.

36 4. Applications for an energy cost savings benefit shall be in the
37 form and contain such information, exhibits and supporting data as the
38 board may prescribe. The board shall review the applications received
39 and shall determine the applications which best meet the criteria estab-
40 lished for the benefits pursuant to this subdivision and it shall recom-
41 mend such applications to the power authority of the state of New York
42 with such terms and conditions as it deems appropriate; provided, howev-
43 er, that for energy cost savings benefits granted on or after June thir-
44 tieth, two thousand nine through [May fifteenth] DECEMBER THIRTY-FIRST,
45 two thousand ten, the board shall expedite the awarding of such benefits
46 and shall defer the review of compliance with such criteria until after
47 the applicant has been awarded an energy cost savings benefit. Such
48 terms and conditions shall include reasonable provisions providing for
49 the partial or complete withdrawal of the energy cost savings benefit in
50 the event the recipient fails to maintain mutually agreed upon commit-
51 ments that may include, but are not limited to, levels of employment,
52 capital investment and power utilization. Recommendation for approval of
53 an energy cost savings benefit shall qualify an applicant to receive an
54 energy cost savings benefit from the power authority of the state of New
55 York pursuant to the terms and conditions of the recommendation.

1 S 3. The opening paragraph of paragraph 5 of subdivision (a) of
2 section 189 of the economic development law, as amended by chapter 217
3 of the laws of 2009, is amended to read as follows:

4 "Power for jobs electricity savings reimbursements" shall mean
5 payments made by the power authority of the state of New York as recom-
6 mended by the board to recipients of allocations of power under phases
7 four and five of the power for jobs program for a period of time until
8 November thirtieth, two thousand four, subsequent to the expiration of
9 their phase four or five power for jobs contract provided however that
10 any power for jobs recipient may choose to receive an electricity
11 savings reimbursement as a substitute for a contract extension for the
12 period from the date the recipient's contract expires through [May
13 fifteenth] DECEMBER THIRTY-FIRST, two thousand ten. The "basic
14 reimbursement" is an amount that when credited against the recipient's
15 actual "unit cost of electricity" during a quarter (meaning the cost for
16 commodity and delivery per kilowatt-hour for the quantity of electricity
17 purchased and delivered under the power for jobs program during a simi-
18 lar period in the final year of the recipient's contract), results in an
19 effective unit cost of electricity during the quarter equal to the aver-
20 age unit cost of electricity such recipient paid during the final year
21 of the contract for power allocated under phase four or five of the
22 power for jobs program.

23 S 4. Subdivisions (f) and (l) of section 189 of the economic develop-
24 ment law, as amended by chapter 217 of the laws of 2009, are amended to
25 read as follows:

26 (f) Eligibility. The board shall recommend applications for allo-
27 cations of power under the power for jobs program to or for the use of
28 businesses which normally utilize a minimum peak electric demand in
29 excess of four hundred kilowatts; provided, however, that up to one
30 hundred megawatts of power available for allocation during the initial
31 three phases of the power for jobs program may be recommended for allo-
32 cations to not-for-profit corporations and to small businesses; and,
33 provided, further that up to seventy-five megawatts of power available
34 for allocation during the fourth phase of the program may be recommended
35 for allocations to not-for-profit corporations and to small businesses.
36 The board may require small businesses that normally utilize a minimum
37 peak electric demand of less than one hundred kilowatts to aggregate
38 their electric demand in amounts of no less than one hundred kilowatts,
39 for the purposes of applying to the board for an allocation of power.
40 The board shall recommend allocations of the additional three hundred
41 megawatts available during the fourth phase of the program to any such
42 eligible applicant, including any recipient of power allocated during
43 the first phase of the program. The board shall recommend allocations of
44 the additional one hundred eighty-three megawatts available during the
45 fifth phase of the program to any eligible applicant, including any
46 recipient of power allocated during the second and third phases of the
47 program; provided, however, that the term of contracts for allocations
48 under the fifth phase of the program shall in no case extend beyond [May
49 fifteenth] DECEMBER THIRTY-FIRST, two thousand ten. Notwithstanding any
50 provision of law to the contrary, and, in particular, the provisions of
51 this chapter concerning the terms of contracts for allocations under the
52 power for jobs program, the terms of any contract with a recipient of
53 power allocated under phase two of the power for jobs program that has
54 expired or will expire on or before the thirty-first day of August, two
55 thousand two, may be extended by the power authority of the state of New
56 York for an additional period of three months effective on the date of

1 such expiration, pending the filing and approval of an application by
2 such recipient for an allocation under the fifth phase of the program.
3 The term of any new contract with such recipient under the fifth phase
4 of the program shall be deemed to include any three month contract
5 extension made pursuant to this subdivision and the termination date of
6 any such new contract under phase five shall be no later than if such
7 new contract had commenced upon the expiration of the recipient's
8 original phase two contract. The terms of any contract with a recipient
9 of power allocated under phase four and/or phase five of the power for
10 jobs program that has expired or will expire on or before the thirty-
11 first day of December, two thousand five, may be extended by the power
12 authority of the state of New York from a date beginning no earlier than
13 the first day of December, two thousand four and extending through [May
14 fifteenth] DECEMBER THIRTY-FIRST, two thousand ten.

15 (1) The board shall solicit and review applications for the power for
16 jobs electricity savings reimbursements and contract extensions from
17 recipients of power for jobs allocations under phases four and five of
18 the program for the award of such reimbursements and/or contract exten-
19 sions. The board may prescribe a simplified form and content for an
20 application for such reimbursements or extensions. An applicant shall be
21 eligible for such reimbursements and/or extensions only if it is in
22 compliance with and agrees to continue to meet the job retention and
23 creation commitments set forth in its prior power for jobs contract, or
24 such other commitments as the board deems reasonable; provided, however,
25 that for the power for jobs electricity savings reimbursements and
26 contract extensions granted on or after June thirtieth, two thousand
27 nine through [May fifteenth] DECEMBER THIRTY-FIRST, two thousand ten,
28 the board shall expedite the awarding of such reimbursements and/or
29 extensions and shall defer the review of compliance with such commit-
30 ments until after the applicant has been awarded a power for jobs elec-
31 tricity savings reimbursement and/or contract extension. The board shall
32 review such applications and make recommendations for the award: 1. of
33 such reimbursements through the power authority of the state of New York
34 for a period of time up to November thirtieth, two thousand four, and 2.
35 of such contract extensions or reimbursements as applied for by the
36 recipient for a period of time beginning December first, two thousand
37 four and ending [May fifteenth] DECEMBER THIRTY-FIRST, two thousand ten.
38 At no time shall a recipient receive both a reimbursement and extension
39 after December first, two thousand four. The power authority of the
40 state of New York shall receive notification from the board regarding
41 the award of power for jobs electricity savings reimbursements and/or
42 contract extensions.

43 S 5. Section 9 of chapter 316 of the laws of 1997 amending the public
44 authorities law and other laws relating to the provision of low cost
45 power to foster statewide economic development, as amended by chapter
46 217 of the laws of 2009, is amended to read as follows:

47 S 9. This act shall take effect immediately and shall expire and be
48 deemed repealed [May 15] DECEMBER 31, 2010.

49 S 6. Section 11 of chapter 645 of the laws of 2006 amending the
50 economic development law and other laws relating to reauthorizing the
51 New York power authority to make contributions to the general fund, as
52 amended by chapter 217 of the laws of 2009, is amended to read as
53 follows:

54 S 11. This act shall take effect immediately and shall be deemed to
55 have been in full force and effect on and after April 1, 2006; provided,
56 however, that the amendments to section 183 of the economic development

1 law and subparagraph 2 of paragraph g of the ninth undesignated para-
2 graph of section 1005 of the public authorities law made by sections two
3 and six of this act shall not affect the expiration of such section and
4 subparagraph, respectively, and shall be deemed to expire therewith;
5 provided further, however, that the amendments to section 189 of the
6 economic development law and subdivision 9 of section 186-a of the tax
7 law made by sections three, four, five and ten of this act shall not
8 affect the repeal of such section and subdivision, respectively, and
9 shall be deemed to be repealed therewith; provided further, however,
10 that section seven of this act shall expire and be deemed repealed [May
11 15] DECEMBER 31, 2010.

12 S 7. Subdivision (b) of section 183 of the economic development law,
13 as amended by chapter 316 of the laws of 1997, is amended to read as
14 follows:

15 (b) To evaluate applications for allocations of economic development
16 power and of power under the power for jobs program and to make recom-
17 mendations with respect to such proposed allocations; PROVIDED HOWEVER,
18 THAT THE BOARD SHALL NOT ACCEPT ANY NEW APPLICATION THAT REQUESTS AN
19 ALLOCATION OF ECONOMIC DEVELOPMENT POWER OR POWER UNDER THE POWER FOR
20 JOBS PROGRAM AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND TEN; AND PROVIDED
21 FURTHER THAT THE BOARD SHALL NOT EXTEND THE TERM OF ANY CONTRACT FOR AN
22 ALLOCATION UNDER THE ECONOMIC DEVELOPMENT PROGRAM THAT WILL EXPIRE ON OR
23 BEFORE JANUARY FIRST, TWO THOUSAND TEN FOR THE PURPOSE OF PROVIDING AN
24 ALLOCATION AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND TEN.

25 S 8. Section 183 of the economic development law is amended by adding
26 a new subdivision (i) to read as follows:

27 (I) TO SOLICIT APPLICATIONS FOR AWARDS UNDER THE POWER SOLUTIONS
28 PROGRAM AND MAKE RECOMMENDATIONS TO THE POWER AUTHORITY OF THE STATE OF
29 NEW YORK FOR AWARDS UNDER SUCH PROGRAM IN THE MANNER AUTHORIZED IN
30 SECTION ONE HUNDRED EIGHTY-EIGHT-A OF THIS ARTICLE.

31 S 9. Subdivision (g) of section 183 of the economic development law,
32 as amended by chapter 226 of the laws of 2002, is amended to read as
33 follows:

34 (g) [The] EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE board
35 shall solicit applications for economic development power and for power
36 under the power for jobs program by public notice. Such notice shall be
37 in the form of newspaper advertisements, press releases, and by such
38 other means as the board finds appropriate. Solicitations of preliminary
39 applications for power under the power for jobs program shall begin
40 promptly after the effective date of chapter three hundred sixteen of
41 the laws of nineteen hundred ninety-seven establishing such program. The
42 board shall solicit applications for the additional three hundred mega-
43 watts of power available during the fourth phase of the program by
44 public notice, written notification to each recipient of power allocated
45 during the first phase of the program, and such other means as the board
46 finds appropriate. Solicitations of applications for such three hundred
47 megawatts of power available in phase four of the program shall begin
48 promptly after the effective date of part KK of chapter sixty-three of
49 the laws of two thousand making such power available. The board shall
50 solicit applications for the additional one hundred eighty-three mega-
51 watts of power available during the fifth phase of the program by public
52 notice, written notification to each recipient of power allocated during
53 the second and third phases of the program, and by such other means as
54 the board finds appropriate. Solicitations for such one hundred eighty-
55 three megawatts of power available in phase five of the program shall

1 begin promptly after the effective date of the chapter of the laws of
2 two thousand two making such power available.

3 S 10. Section 183 of the economic development law, as added by chapter
4 32 of the laws of 1987, is amended to read as follows:

5 S 183. General powers and duties of the board. In furtherance of the
6 purposes set forth in this article, the board shall have the following
7 powers:

8 (a) To adopt, within one hundred twenty days after appointment, eligi-
9 bility criteria and rules and regulations, IN CONSULTATION WITH THE
10 POWER AUTHORITY OF THE STATE OF NEW YORK AND THE URBAN DEVELOPMENT
11 CORPORATION, relating to the activities of the board AS DESCRIBED IN
12 THIS ARTICLE.

13 (b) To evaluate applications for allocations of economic development
14 power and to make recommendations with respect to such proposed allo-
15 cations, PROVIDED HOWEVER, THAT THE BOARD SHALL NOT ACCEPT NEW APPLICA-
16 TIONS OR EXTEND ANY CONTRACTS FOR ALLOCATIONS OF ECONOMIC DEVELOPMENT
17 POWER TO EXTEND BEYOND DECEMBER THIRTY-FIRST, TWO THOUSAND TEN.

18 (c) [To evaluate economic development plans for the use of industrial
19 incentive awards submitted by the power authority of the state of New
20 York pursuant to this article.

21 (d)] To provide advice and assistance when appropriate to applicants
22 on state economic development programs and services in addition to the
23 economic development power [and industrial incentive awards specif-
24 ically] AS provided for in this section.

25 (D) TO SOLICIT APPLICATIONS FOR AWARDS UNDER THE POWER SOLUTIONS
26 PROGRAM, AND MAKE RECOMMENDATIONS TO THE POWER AUTHORITY OF THE STATE OF
27 NEW YORK FOR AWARDS UNDER SUCH PROGRAM IN THE MANNER AUTHORIZED IN
28 SECTION ONE HUNDRED EIGHTY-EIGHT-A OF THIS ARTICLE.

29 The [department, the] power authority of the state of New York, [the
30 urban development corporation, and all other state officers, depart-
31 ments, boards, divisions and commissions] WITH THE ASSISTANCE OF THE
32 URBAN DEVELOPMENT CORPORATION AND THE DEPARTMENT OF ECONOMIC DEVELOP-
33 MENT, shall render such services to the board [within their respective
34 functions] as may be requested by the board. IN ADDITION, EVERY AGENCY,
35 DEPARTMENT, OFFICE, DIVISION OR PUBLIC AUTHORITY OF THIS STATE SHALL
36 COOPERATE WITH THE BOARD AND FURNISH SUCH INFORMATION AND ASSISTANCE AS
37 THE BOARD DETERMINES IS REASONABLY NECESSARY TO ACCOMPLISH ITS PURPOSE.

38 [The board shall solicit applications for economic development power
39 by public notice. Such notice shall be in the form of newspaper adver-
40 tisements, press releases, and by such other means as the board finds
41 appropriate.]

42 S 11. The economic development law is amended by adding a new section
43 188-a to read as follows:

44 S 188-A. POWER SOLUTIONS PROGRAM. 1. DEFINITIONS. FOR THE PURPOSES OF
45 THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

46 (A) "APPLICABLE CRITERIA" SHALL MEAN THE CRITERIA SPECIFIED IN SUBDI-
47 VISION THREE OF THIS SECTION.

48 (B) "AUTHORITY" SHALL MEAN THE POWER AUTHORITY OF THE STATE OF NEW
49 YORK.

50 (C) "POWER SOLUTIONS AWARD" OR "AWARD" SHALL MEAN AN ALLOCATION OF
51 POWER OR AN AWARD PAID BY THE AUTHORITY PURSUANT TO SECTION ONE THOUSAND
52 FIVE OF THE PUBLIC AUTHORITIES LAW IN THE FORM OF AN ELECTRIC BILL CRED-
53 IT ON THE INVOICE PROVIDED BY THE RECIPIENT'S LOCAL DISTRIBUTOR OF ELEC-
54 TRIC SERVICE PURSUANT TO THE POWER SOLUTIONS PROGRAM CREATED BY THIS
55 SECTION AND/OR THE PROVISION OF ENERGY RELATED PROJECTS, PROGRAMS AND

1 SERVICES AS DEFINED IN SUBDIVISION SIXTEEN OF SECTION ONE THOUSAND FIVE
2 OF THE PUBLIC AUTHORITIES LAW.

3 (D) "ELIGIBLE APPLICANT" SHALL MEAN AN ELIGIBLE BUSINESS, ELIGIBLE
4 SMALL BUSINESS, OR ELIGIBLE NOT-FOR-PROFIT CORPORATION AS DEFINED IN
5 THIS SECTION, PROVIDED HOWEVER, THAT AN ELIGIBLE APPLICANT SHALL NOT
6 INCLUDE RETAIL BUSINESSES AS DEFINED BY THE BOARD, INCLUDING, WITHOUT
7 LIMITATION, SPORTS VENUES, GAMING OR ENTERTAINMENT-RELATED ESTABLISH-
8 MENTS OR PLACES OF OVERNIGHT ACCOMMODATION.

9 (E) "ELIGIBLE BUSINESS" SHALL MEAN A BUSINESS OTHER THAN A
10 NOT-FOR-PROFIT CORPORATION WHICH NORMALLY UTILIZES A MINIMUM PEAK ELEC-
11 TRIC DEMAND IN EXCESS OF FOUR HUNDRED KILOWATTS.

12 (F) "ELIGIBLE SMALL BUSINESS" SHALL MEAN A BUSINESS OTHER THAN A NOT-
13 FOR-PROFIT CORPORATION WHICH NORMALLY UTILIZES A MINIMUM PEAK ELECTRIC
14 DEMAND EQUAL TO OR LESS THAN FOUR HUNDRED KILOWATTS.

15 (G) "LOCAL DISTRIBUTOR OF ELECTRIC SERVICE" SHALL MEAN AN ELECTRIC
16 CORPORATION AS DEFINED IN SUBDIVISION THIRTEEN OF SECTION TWO OF THE
17 PUBLIC SERVICE LAW OR THE LONG ISLAND POWER AUTHORITY.

18 (H) "ELIGIBLE NOT-FOR-PROFIT CORPORATION" SHALL MEAN A CORPORATION
19 DEFINED IN SUBDIVISION FIVE OF SECTION ONE HUNDRED TWO OF THE
20 NOT-FOR-PROFIT CORPORATION LAW.

21 2. APPLICATIONS. (A) THE BOARD SHALL SOLICIT APPLICATIONS FOR AWARDS
22 UNDER THE POWER SOLUTIONS PROGRAM BY PUBLIC NOTICE BEGINNING ON JULY
23 FIRST, TWO THOUSAND TEN. SUCH NOTICE MAY INCLUDE NEWSPAPER ADVERTISE-
24 MENTS, PRESS RELEASES, WEBSITE POSTINGS, PAPER OR ELECTRONIC MAILING,
25 AND/OR SUCH OTHER FORM AS THE BOARD FINDS APPROPRIATE IN CONSULTATION
26 WITH THE AUTHORITY.

27 (B) APPLICATIONS FOR THE POWER SOLUTIONS PROGRAM SHALL BE IN THE FORM
28 AND CONTAIN SUCH INFORMATION, EXHIBITS AND SUPPORTING DATA AS THE BOARD
29 PRESCRIBES IN CONSULTATION WITH THE AUTHORITY. A COPY OF EACH APPLICA-
30 TION RECEIVED SHALL BE MADE AVAILABLE FOR REVIEW BY EACH BOARD MEMBER.

31 (C) SUBJECT TO CONFIDENTIALITY REQUIREMENTS, UPON RECEIPT OF EACH
32 APPLICATION BY THE AUTHORITY, THE AUTHORITY SHALL PROMPTLY NOTIFY BY
33 ELECTRONIC MEANS, INCLUDING WEB SITE POSTINGS AND SUCH OTHER METHODS THE
34 BOARD DEEMS APPROPRIATE IN CONSULTATION WITH THE AUTHORITY, THE GOVER-
35 NOR, THE SPEAKER OF THE ASSEMBLY, THE MINORITY LEADER OF THE ASSEMBLY,
36 THE TEMPORARY PRESIDENT OF THE SENATE, THE MINORITY LEADER OF THE
37 SENATE, AND EACH MEMBER OF THE STATE LEGISLATURE IN WHOSE DISTRICT ANY
38 PORTION OF THE FACILITY OWNED OR OPERATED BY THE APPLICANT IS LOCATED.
39 SUCH NOTICE SHALL PROVIDE THE NAME AND A DESCRIPTION OF THE APPLICANT,
40 AND THE ADDRESS OF THE APPLICANT'S FACILITIES THAT WOULD RECEIVE AN
41 AWARD UNDER THE PROGRAM. THE AUTHORITY SHALL ALSO DEVELOP A LISTING
42 WHICH CONTAINS THE NAME AND A DESCRIPTION OF EACH APPLICANT, THE AWARD
43 SOUGHT BY EACH APPLICANT, AND THE ADDRESS OF THE FACILITIES FOR WHICH
44 THE APPLICANT SEEKS THE AWARD, AND MAKE THE LISTING AVAILABLE FOR PUBLIC
45 REVIEW ON THE AUTHORITY'S WEBSITE.

46 3. REVIEW, APPLICABLE CRITERIA AND RECOMMENDATIONS. (A) THE BOARD
47 SHALL REVIEW APPLICATIONS SUBMITTED UNDER THE POWER SOLUTIONS PROGRAM.
48 THE BOARD SHALL MAKE AN INITIAL DETERMINATION OF WHETHER THE APPLICANT
49 IS AN ELIGIBLE APPLICANT. AN APPLICANT MUST AGREE TO UNDERTAKE AN AUDIT
50 PURSUANT TO SUBDIVISION SEVENTEEN OF SECTION ONE THOUSAND FIVE OF THE
51 PUBLIC AUTHORITIES LAW IN ORDER TO BE CONSIDERED AN ELIGIBLE APPLICANT
52 BY THE BOARD. THE BOARD MAY RECOMMEND TO THE AUTHORITY THAT A POWER
53 SOLUTIONS PROGRAM AWARD BE AWARDED TO AN APPLICANT BASED ON AN APPLICA-
54 TION OF THE FOLLOWING CRITERIA:

- 1 (I) THE SIGNIFICANCE OF THE COST OF ELECTRICITY TO THE APPLICANT'S
2 OVERALL COST OF DOING BUSINESS, AND THE IMPACT THAT A POWER SOLUTIONS
3 AWARD WILL HAVE ON THE APPLICANT'S OPERATING COSTS;
- 4 (II) THE EXTENT TO WHICH A POWER SOLUTIONS AWARD WILL RESULT IN NEW
5 CAPITAL INVESTMENT IN THE STATE BY THE APPLICANT, THE EXTENT TO WHICH
6 THE APPLICANT WILL AGREE TO COMMIT TO MAKING NEW CAPITAL INVESTMENT AS A
7 CONDITION TO RECEIVING A POWER SOLUTIONS AWARD, AND ANY PREVIOUS CAPITAL
8 INVESTMENT UNDERTAKEN BY THE APPLICANT UNDER OTHER ECONOMIC DEVELOPMENT
9 PROGRAMS WHERE APPLICABLE;
- 10 (III) THE SIZE OF THE APPLICANT'S TOTAL PAYROLL (SALARY, BENEFITS AND
11 THE NUMBER OF JOBS) WITHIN THE STATE AND AT THE FACILITY THAT WOULD
12 RECEIVE THE AWARD;
- 13 (IV) THE NUMBER OF JOBS THAT WILL BE CREATED OR RETAINED WITHIN THE
14 STATE IN RELATION TO THE REQUESTED POWER SOLUTIONS AWARD, AND THE EXTENT
15 TO WHICH THE APPLICANT WILL AGREE TO COMMIT TO CREATING OR RETAINING
16 SUCH JOBS AS A CONDITION TO RECEIVING A POWER SOLUTIONS AWARD;
- 17 (V) WHETHER THE APPLICANT, DUE TO THE HIGH COST OF ELECTRICITY, IS AT
18 RISK OF CLOSING FACILITIES OR OPERATIONS IN THE STATE, RELOCATING FACIL-
19 ITIES OR OPERATIONS OUT OF THE STATE, OR LOSING A SIGNIFICANT NUMBER OF
20 JOBS IN THE STATE, IN THE ABSENCE OF A POWER SOLUTIONS AWARD;
- 21 (VI) THE SIGNIFICANCE OF THE APPLICANT'S FACILITY THAT WOULD RECEIVE
22 THE BENEFIT OF THE AWARD TO THE ECONOMY OF THE AREA IN WHICH SUCH FACIL-
23 ITY IS LOCATED;
- 24 (VII) THE EXTENT TO WHICH THE APPLICANT HAS INVESTED IN ENERGY EFFI-
25 CIENCY MEASURES AND/OR ONSITE POWER GENERATION FOR COMBINED HEAT AND
26 POWER AND/OR DISTRIBUTED GENERATION PURPOSES OR WILL AGREE, IF RECOM-
27 MENDED BY THE BOARD FOR AN AWARD, TO COMMIT TO MAKING COST EFFECTIVE
28 TANGIBLE INVESTMENTS IN ENERGY EFFICIENCY MEASURES AND/OR ONSITE POWER
29 GENERATION FOR COMBINED HEAT AND POWER AND/OR DISTRIBUTED GENERATION
30 PURPOSES AS IDENTIFIED PURSUANT TO SUBDIVISION SEVENTEEN OF SECTION ONE
31 THOUSAND FIVE OF THE PUBLIC AUTHORITIES LAW AS A CONDITION TO RECEIVING
32 A POWER SOLUTIONS AWARD;
- 33 (VIII) THE EXTENT TO WHICH THE APPLICANT'S OPERATIONS ARE CONSISTENT
34 WITH THE POLICIES AND GOALS OF THE STATE ENERGY PLAN;
- 35 (IX) THE EXTENT TO WHICH THE APPLICANT PREVIOUSLY RECEIVED BENEFITS
36 UNDER OTHER POWER-RELATED PROGRAMS OF THE AUTHORITY, AND THE APPLICANT'S
37 PRIOR PERFORMANCE UNDER SUCH PROGRAMS WHERE APPLICABLE;
- 38 (X) IN THE CASE OF A NOT-FOR-PROFIT CORPORATION, WHETHER IT PROVIDES
39 CRITICAL SERVICES OR SUBSTANTIAL BENEFITS TO THE LOCAL COMMUNITY;
- 40 (XI) THE EXTENT TO WHICH AN AWARD IS CONSISTENT WITH STATE, REGIONAL
41 AND LOCAL ECONOMIC DEVELOPMENT STRATEGIES AND SUPPORTED BY LOCAL UNITS
42 OF GOVERNMENT IN THE AREA IN WHICH THE BUSINESS IS LOCATED OR TO BE
43 LOCATED;
- 44 (XII) THE EXTENT TO WHICH AN AWARD MIGHT RESULT IN INEQUITY FOR AN
45 APPLICANT AS COMPARED TO ITS COMPETITORS WITHIN THE STATE; AND
- 46 (XIII) IMPACT OF CURRENT ECONOMIC CONDITIONS ON THE APPLICANT.
- 47 (B) A RECOMMENDATION BY THE BOARD THAT THE AUTHORITY PROVIDE A POWER
48 SOLUTIONS PROGRAM AWARD TO AN ELIGIBLE APPLICANT SHALL INCLUDE: (1) A
49 DESCRIPTION OF THE AWARD THAT THE BOARD HAS DETERMINED SHOULD BE AWARDED
50 TO SUCH APPLICANT, PROVIDED HOWEVER, THAT THE BOARD MAY RECOMMEND AN
51 AWARD THAT DIFFERS FROM THE AWARD REQUESTED BY AN ELIGIBLE APPLICANT;
52 (2) AN EFFECTIVE TERM OF CONTRACT BETWEEN THE ELIGIBLE APPLICANT AND THE
53 AUTHORITY WHICH SHALL NOT EXCEED SEVEN YEARS, PROVIDED HOWEVER THAT THE
54 TERM OF ANY SUCH CONTRACT SHALL NOT BECOME EFFECTIVE BEFORE JANUARY
55 FIRST, TWO THOUSAND ELEVEN; (3) THE DATE OF THE MANDATORY MIDCONTRACT
56 COMPLIANCE REVIEW AT WHICH TIME THE ELIGIBLE APPLICANT, IF FOUND IN

1 COMPLIANCE MAY APPLY FOR A SUBSEQUENT CONTRACT TO GO INTO EFFECT AT THE
2 CONCLUSION OF THE CURRENT CONTRACT AS LONG AS COMPLIANCE CONTINUES
3 THROUGH THE CONCLUSION OF SUCH CONTRACT; AND (4) SUCH OTHER TERMS AND
4 CONDITIONS THAT THE BOARD RECOMMENDS AS APPROPRIATE. SUCH TERMS AND
5 CONDITIONS SHALL INCLUDE PROVISIONS FOR EFFECTIVE PERIODIC AUDITS OF
6 PROGRAM PARTICIPANTS FOR THE PURPOSE OF DETERMINING CONTRACT AND PROGRAM
7 COMPLIANCE, AND THE PARTIAL OR COMPLETE WITHDRAWAL OF A POWER SOLUTIONS
8 PROGRAM AWARD IN THE CASE OF A PROGRAM PARTICIPANT THAT FAILS TO MAIN-
9 TAIN MUTUALLY AGREED UPON COMMITMENTS, INCLUDING BUT NOT LIMITED TO
10 LEVELS OF EMPLOYMENT, POWER UTILIZATION, CAPITAL INVESTMENTS, AND ENERGY
11 EFFICIENCY MEASURES.

12 (C) THE BOARD MAY BASE ITS RECOMMENDATION ON WHICH ELIGIBLE APPLICANTS
13 IT DETERMINES BEST MEET THE APPLICABLE CRITERIA; PROVIDED HOWEVER THAT
14 THE BOARD SHALL SET ASIDE A PORTION OF THE BENEFITS AVAILABLE UNDER THE
15 POWER SOLUTIONS PROGRAM IN AN AMOUNT NOT LESS THAN ONE HUNDRED MEGAWATTS
16 FOR ELIGIBLE SMALL BUSINESSES AND ELIGIBLE NOT-FOR-PROFIT CORPORATIONS;
17 AND PROVIDED FURTHER THAT THE BOARD SHALL SET ASIDE A PORTION OF THE
18 BENEFITS AVAILABLE UNDER THE PROGRAM IN AN AMOUNT NOT LESS THAN ONE
19 HUNDRED MEGAWATTS FOR ELIGIBLE HIGH LOAD FACTOR MANUFACTURERS AS DEFINED
20 IN THE FOURTH UNDESIGNATED PARAGRAPH OF SECTION ONE THOUSAND FIVE OF THE
21 PUBLIC AUTHORITIES LAW.

22 (D) A RECOMMENDATION FOR A POWER SOLUTIONS PROGRAM AWARD SHALL QUALIFY
23 AN APPLICANT TO ENTER INTO A CONTRACT, WITH THE AUTHORITY TO RECEIVE
24 SUCH AWARD FROM THE AUTHORITY PURSUANT TO THE TERMS AND CONDITIONS OF
25 THE RECOMMENDATION OR ON SUCH OTHER TERMS AS THE AUTHORITY DETERMINES TO
26 BE APPROPRIATE. IN THE EVENT THAT THE AWARD INCLUDES THE PROVISION OF
27 ENERGY RELATED PROJECTS, PROGRAMS AND SERVICES AS DEFINED IN SUBDIVISION
28 SIXTEEN OF SECTION ONE THOUSAND FIVE OF THE PUBLIC AUTHORITIES LAW, THE
29 CONTRACT SHALL ALLOW FOR REIMBURSEMENT FOR COSTS TO AN ENTITY OTHER THAN
30 THE POWER AUTHORITY OF THE STATE OF NEW YORK SO LONG AS SUCH COSTS ARE
31 DEEMED REASONABLE AND APPROPRIATE. SUCH CONTRACTS SHALL PROVIDE THAT
32 THE LOCAL DISTRIBUTOR OF ELECTRIC SERVICE WILL PROVIDE CUSTOMER AND
33 BILLING SERVICES UPON MUTUALLY AGREED TERMS AND CONDITIONS.

34 (E) UPON APPROVAL OR DENIAL OF ANY APPLICATION FOR A POWER SOLUTIONS
35 PROGRAM AWARD, THE BOARD SHALL ISSUE IN WRITING A STATEMENT OF ITS FIND-
36 INGS AND CONCLUSIONS WITH RESPECT TO SUCH APPLICATION AND THE REASONS
37 FOR ITS APPROVAL OR DENIAL.

38 (F) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, WITH RESPECT
39 TO APPLICANTS WHO AS OF DECEMBER FIRST, TWO THOUSAND TEN, ARE IN
40 SUBSTANTIAL COMPLIANCE WITH ALL CONTRACTUAL COMMITMENTS AND RECEIVING
41 BENEFITS UNDER THE POWER FOR JOBS, ENERGY COST SAVINGS BENEFIT, ECONOMIC
42 DEVELOPMENT, HIGH LOAD FACTOR OR MUNICIPAL DISTRIBUTION AGENCY PROGRAMS,
43 BUT WOULD OTHERWISE NOT RECEIVE A RECOMMENDATION FROM THE BOARD FOR A
44 POWER SOLUTIONS PROGRAM AWARD, THE BOARD SHALL RECOMMEND AND THE AUTHOR-
45 ITY SHALL PROVIDE AN AWARD OF THE POWER SOLUTIONS PROGRAM AND SHALL
46 PHASE OUT SUCH AWARD OVER A PERIOD NOT TO EXCEED TWO YEARS ON THE
47 FOLLOWING TERMS: IN THE FIRST YEAR, THE AWARD SHALL BE IN AN AMOUNT THAT
48 IS EQUAL TO SIXTY-SIX PERCENT OF THE VALUE OF SUCH BENEFIT RECEIVED IN
49 THE PRECEDING TWELVE MONTHS, AND IN THE SECOND YEAR THE AWARD SHALL BE
50 EQUAL TO THIRTY-THREE PERCENT OF THE VALUE OF SUCH BENEFIT. SUCH APPLI-
51 CANT SHALL NOT BE ENTITLED TO REAPPLY FOR AN AWARD UNDER THE POWER
52 SOLUTIONS PROGRAM DURING THE TERM OF SUCH AWARD. APPLICANTS MAY APPLY
53 FOR A ONE-YEAR EXTENSION IN SUCH CASE: ONE HUNDRED PERCENT OF THE VALUE
54 OF SUCH BENEFIT SHALL BE RECEIVED IN THE FIRST YEAR WITH A VALUE EQUAL
55 TO SIXTY-SIX PERCENT IN THE SECOND YEAR AND IN THE THIRD YEAR THE AWARD
56 SHALL BE EQUAL TO THIRTY-THREE PERCENT OF THE VALUE OF SUCH BENEFIT.

1 (G) SUBJECT TO THE THIRTEENTH UNDESIGNATED PARAGRAPH OF SECTION ONE
2 THOUSAND FIVE OF THE PUBLIC AUTHORITIES LAW, AS ADDED BY THE CHAPTER OF
3 THE LAWS OF TWO THOUSAND TEN THAT ADDED THIS SECTION, THE BOARD SHALL
4 NOT RECOMMEND POWER SOLUTIONS PROGRAM AWARDS UNDER THE POWER SOLUTIONS
5 PROGRAM IN EXCESS OF NINE HUNDRED FIFTY MEGAWATTS OF ELECTRICITY, UNTIL
6 JANUARY FIRST, TWO THOUSAND FOURTEEN, WHEN UPON SUCH DATE SUCH AMOUNT
7 MAY NOT EXCEED ONE THOUSAND ONE HUNDRED MEGAWATTS OF ECONOMIC DEVELOP-
8 MENT POWER PROGRAM AWARDS. ANY POWER SOLUTIONS AWARD WHICH IS RELIN-
9 QUISHED OR WITHDRAWN SHALL BE AVAILABLE FOR REALLOCATION TO ELIGIBLE
10 APPLICANTS.

11 (H) (1) THE BOARD SHALL SUBMIT TO THE DIRECTOR OF THE BUDGET, THE
12 CHAIRPERSON OF THE SENATE FINANCE COMMITTEE AND THE CHAIRPERSON OF THE
13 ASSEMBLY WAYS AND MEANS COMMITTEE AN EVALUATION OF THE SUCCESS OF EACH
14 ECONOMIC DEVELOPMENT POWER PROGRAM IT ADMINISTERS PREPARED BY AN INDE-
15 PENDENT THIRD PARTY. SUCH EVALUATION SHALL DETERMINE WHETHER THE
16 SERVICES PROVIDED HAVE HELPED RECIPIENTS TO SUCCEED, BASED ON A COMPAR-
17 ISON OF THE PERFORMANCE OF THE RECIPIENTS AGAINST THE NORMS OF THEIR
18 SPECIFIC INDUSTRY, AND SHALL ASSESS THE EFFECTIVENESS, IF ANY, OF EACH
19 ECONOMIC DEVELOPMENT POWER PROGRAM. SUCH AN EVALUATION SHALL BE SUBMIT-
20 TED BY DECEMBER THIRTY-FIRST, TWO THOUSAND FOURTEEN AND BY DECEMBER
21 THIRTY-FIRST EVERY FIVE YEARS THEREAFTER.

22 (2) BETWEEN EVALUATION DUE DATES, THE BOARD SHALL MAINTAIN THE NECES-
23 SARY RECORDS AND DATA REQUIRED TO SATISFY SUCH EVALUATION REQUIREMENTS
24 AND TO SATISFY INFORMATION REQUESTS RECEIVED FROM THE DIRECTOR OF THE
25 BUDGET, THE CHAIRPERSON OF THE SENATE FINANCE COMMITTEE AND THE CHAIR-
26 PERSON OF THE ASSEMBLY WAYS AND MEANS COMMITTEE BETWEEN SUCH EVALUATION
27 DUE DATES.

28 S 12. Subdivision 5 of section 1005 of the public authorities law, as
29 amended by chapter 294 of the laws of 1968, paragraph g as amended by
30 chapter 369 of the laws of 1974, is amended to read as follows:

31 5. To develop, maintain, manage and operate those parts of the Niagara
32 and Saint Lawrence hydroelectric projects owned or controlled by it in
33 such manner as to give effect to the policy hereby declared (and all
34 plans and acts, and all contracts for the use, sale, transmission and
35 distribution of the power generated by such projects, shall be made in
36 the light of, consistent with and subject to this policy), namely, that
37 such projects shall be in all respects for the aid, improvement, and
38 benefit of commerce and navigation in, through, along and past the
39 Niagara river, the Saint Lawrence river and the international rapids
40 section thereof, and that in the development of hydro-electric power
41 therefrom such projects shall, UNTIL THAT TIME WHEN THE AUTHORITY IMPLI-
42 MENTS THE ENERGY EFFICIENCY MEASURES FOR DOMESTIC AND RURAL CUSTOMERS
43 REQUIRED BY THIS SUBDIVISION BUT NO LATER THAN JANUARY FIRST, TWO THOU-
44 SAND FOURTEEN, be considered primarily as for the benefit of the people
45 of the state as a whole and particularly the domestic and rural consum-
46 ers to whom the power can economically be made available, and accord-
47 ingly that sale to and use by industry shall be a secondary purpose UNTIL
48 THE AUTHORITY IMPLEMENTS THE ENERGY EFFICIENCY MEASURES FOR DOMESTIC AND
49 RURAL CUSTOMERS REQUIRED BY THIS SUBDIVISION, BUT IN ANY EVENT NO LATER
50 THAN JANUARY FIRST, TWO THOUSAND FOURTEEN, AT WHICH TIME THE SALE AND
51 USE BY INDUSTRY SHALL BECOME A PRIMARY PURPOSE, to be utilized princi-
52 pally to secure a sufficiently high load factor and revenue returns to
53 permit domestic and rural use at the lowest possible rates and in such
54 manner as to encourage [increased] EFFICIENT domestic and rural use of
55 electricity. In furtherance of this policy and to secure a wider
56 distribution of such power and use of the greatest value to the general

1 public of the state, the authority shall in addition to other methods
2 which it may find advantageous make provision so that municipalities and
3 other political [sub-divisions] SUBDIVISIONS of the state now or here-
4 after authorized by law to engage in the distribution of electric power
5 may secure a reasonable share of the power generated by such projects,
6 and shall sell the same or cause the same to be sold to such munici-
7 palities and political subdivisions at prices representing cost of
8 generation, plus capital and operating charges, plus a fair cost of
9 transmission, all as determined by the trustees, and subject to condi-
10 tions which shall assure the resale of such power to domestic and rural
11 consumers at the lowest possible price, provided, however, that in
12 disposing of hydro-electric power pursuant to and in furtherance of the
13 aforementioned policy and purposes, appropriate provision may also be
14 made to allocate a reasonable share of project power to agencies created
15 or designated by other states and authorized to resell the power to
16 users under the same terms and conditions as power is disposed of in New
17 York state. To that end, the authority may provide in any contract or
18 contracts which it may make for the sale, transmission and distribution
19 of the power that the purchaser, transmitter or distributor shall
20 construct, maintain and operate, on such terms as the authority may deem
21 proper, such connecting lines as may be necessary for transmission of
22 the power from main transmission lines to such municipalities or poli-
23 tical subdivisions.

24 Contracts for the sale, transmission and distribution of power gener-
25 ated by such projects shall provide for the effectuation of the forego-
26 ing policy and shall provide:

27 a. Payment of all operating and maintenance expenses of the project.

28 b. Interest on and amortization and reserve charges sufficient within
29 fifty years of the date of issuance to retire the bonds of the power
30 authority issued for the project.

31 c. Continuous control and operation of the project by the authority.

32 d. The effectuation of the policy declared in this [sub-paragraph]
33 SUBPARAGRAPH.

34 e. Full and complete disclosure to the authority of all factors of
35 cost in the transmission and distribution of power, so that rates to
36 consumers may be fixed initially in the contract and may be adjusted
37 from time to time on the basis of true cost data, provided that in
38 fixing such cost of transmission and distribution no account shall be
39 given to any franchise value, going value or good-will based upon the
40 existence of the contract and the availability of the power for sale by
41 the transmitting or distributing company or any company associated ther-
42 ewith.

43 f. Periodic revisions of the service and rates to consumers on the
44 basis of accurate cost data obtained by such accounting methods and
45 systems as shall be approved by the trustees and in furtherance and
46 effectuation of the policy declared in this [sub-paragraph]
47 SUBPARAGRAPH.

48 g. That the rates, services and practices of the purchasing, transmit-
49 ting and/or distributing public agencies or companies in respect to the
50 power generated by such projects shall be governed by the provisions and
51 principles established in the contract, and not by regulations of the
52 public service commission or by general principles of public service law
53 regulating rates, services and practices and that in the event any such
54 public agencies or companies which purchase power from the authority
55 shall sell any such power for resale, such sale for resale shall be made

1 at rates no higher than those at which the power was purchased from the
2 authority.

3 h. The rate structures agreed upon in such contract may provide
4 different rates for different localities, classes of consumers, and
5 amounts of current consumed, and for changes in the rates resulting from
6 variation in operating costs and fixed charges.

7 i. For the cancellation and termination of any such contract upon
8 violation of the terms thereof by the purchasing, transmitting or
9 distributing public agency or company, or any subsidiary or associate
10 thereof.

11 j. For such security for performance as the authority may deem practi-
12 cable and advisable, including provisions assuring the continuance of
13 service by the purchasing, transmitting and/or distributing public agen-
14 cies or companies and/or the use of their facilities for such service
15 and/or the continuance of an outlet and adequate market for the power
16 generated by such projects.

17 k. Such other terms not inconsistent with the provisions and policy of
18 this title as the authority may deem advisable.

19 THE AUTHORITY, IN CONJUNCTION WITH ANY INVESTOR OWNED UTILITY THAT
20 PURCHASES HYDROELECTRIC POWER FROM THE AUTHORITY'S NIAGARA AND ST.
21 LAWRENCE POWER PROJECTS FOR RURAL AND DOMESTIC USES PURSUANT TO THIS
22 SUBDIVISION, SHALL INSTALL, IMPLEMENT OR PROVIDE ENERGY EFFICIENCY MEAS-
23 URES OR IMPROVEMENTS TO THOSE DOMESTIC AND RURAL CONSUMERS AS REFERENCED
24 IN THIS SUBDIVISION IN ORDER TO REDUCE THE AMOUNT OF KILOWATTS CONSUMED
25 BY SUCH DOMESTIC AND RURAL CONSUMERS IN AN AMOUNT EQUAL TO OR GREATER
26 THAN THE AMOUNT OF SUCH HYDROELECTRIC POWER SOLD TO SUCH DOMESTIC AND
27 RURAL CONSUMERS. AFTER SUCH IMPROVEMENTS ARE MADE, SUCH HYDROELECTRIC
28 POWER FROM THE AUTHORITY'S NIAGARA AND ST. LAWRENCE POWER PROJECTS SHALL
29 NO LONGER BE MADE AVAILABLE TO DOMESTIC AND RURAL CONSUMERS THAT HAVE
30 RECEIVED THE ENERGY EFFICIENCY MEASURES OR IMPROVEMENTS AND THOSE
31 AMOUNTS OF HYDROELECTRIC POWER NO LONGER CONSUMED DUE TO THE IMPLEMENTA-
32 TION OF ENERGY EFFICIENCY MEASURES OR IMPROVEMENTS MADE PURSUANT TO THIS
33 SUBDIVISION SHALL BE MADE AVAILABLE TO THE POWER SOLUTIONS PROGRAM
34 ESTABLISHED IN ARTICLE SIX OF THE ECONOMIC DEVELOPMENT LAW. SUCH ENERGY
35 EFFICIENCY MEASURES SHALL, TO THE EXTENT PRACTICABLE, BE MADE IN
36 CONJUNCTION WITH OTHER ENERGY EFFICIENCY PROGRAMS OFFERED BY INVESTOR
37 OWNED UTILITIES, STATE AGENCIES AND AUTHORITIES INCLUDING BUT NOT LIMIT-
38 ED TO THE NEW YORK STATE ENERGY AND RESEARCH DEVELOPMENT AUTHORITY AND
39 THE POWER AUTHORITY OF THE STATE OF NEW YORK. THE AUTHORITY SHALL, NO
40 LATER THAN JANUARY FIRST, TWO THOUSAND FOURTEEN, TRANSFER ALL HYDROELEC-
41 TRIC POWER MADE AVAILABLE TO THE DOMESTIC AND RURAL CONSUMERS PURSUANT
42 TO THIS SUBDIVISION TO SUCH POWER SOLUTIONS PROGRAM; AFTER SUCH DATE,
43 THE POWER AUTHORITY OF THE STATE OF NEW YORK SHALL BE RESPONSIBLE FOR
44 PAYING COSTS ASSOCIATED WITH THE LOSS OF HYDROPOWER TO THE RURAL AND
45 DOMESTIC CONSUMERS UNTIL SUCH CONSUMERS RECEIVE ENERGY EFFICIENCY MEAS-
46 URES IF REQUESTED BY THE CONSUMER. THE INVESTOR OWNED UTILITY THAT HAD
47 PREVIOUSLY PROVIDED THE HYDROPOWER SHALL INFORM THE CONSUMER OF ITS
48 RIGHT TO SUCH COST PAYMENT AVAILABILITY. THE POWER AUTHORITY OF THE
49 STATE OF NEW YORK SHALL WORK WITH THE INVESTOR OWNED UTILITIES TO ESTAB-
50 LISH MECHANISMS FOR SUCH PAYMENT TO THOSE CONSUMERS THAT HAVE REQUESTED
51 PAYMENTS.

52 S 13. Section 1005 of the public authorities law is amended by adding
53 a new thirteenth and fourteenth undesignated paragraph to read as
54 follows:

55 BEGINNING NO LATER THAN JANUARY FIRST, TWO THOUSAND ELEVEN, THE
56 AUTHORITY IS AUTHORIZED AND DIRECTED, AS DEEMED FEASIBLE AND ADVISABLE

1 BY THE TRUSTEES, TO MAKE ANNUAL PAYMENTS IN AN AMOUNT OF ONE HUNDRED
2 TWENTY MILLION DOLLARS FOR UP TO NINE HUNDRED FIFTY MEGAWATTS OF POWER
3 SOLUTIONS PROGRAM AWARDS UPON THE RECOMMENDATION OF THE ECONOMIC DEVEL-
4 OPMENT POWER ALLOCATION BOARD UNDER THE POWER SOLUTIONS PROGRAM AS
5 PROVIDED IN SECTION ONE HUNDRED EIGHTY-EIGHT-A OF THE ECONOMIC DEVELOP-
6 MENT LAW. NOT LESS OFTEN THAN ANNUALLY, THE AUTHORITY SHALL IDENTIFY AND
7 ADVISE THE ECONOMIC DEVELOPMENT POWER ALLOCATION BOARD OF THE AVAILABIL-
8 ITY OF THE FUNDS FOR SUCH AWARD.

9 BEGINNING NO LATER THAN JANUARY FIRST, TWO THOUSAND FOURTEEN, THE
10 AUTHORITY IS AUTHORIZED AND DIRECTED, AS DEEMED FEASIBLE AND ADVISABLE
11 BY THE TRUSTEES, TO MAKE ANNUAL PAYMENTS IN AN AMOUNT UP TO ONE HUNDRED
12 TWENTY MILLION DOLLARS FOR UP TO ONE THOUSAND ONE HUNDRED MEGAWATTS OF
13 ELECTRICITY COST AWARDS UPON THE RECOMMENDATION OF THE ECONOMIC DEVELOP-
14 MENT POWER ALLOCATION BOARD UNDER THE POWER SOLUTIONS PROGRAM AS
15 PROVIDED IN SECTION ONE HUNDRED EIGHTY-EIGHT-A OF THE ECONOMIC DEVELOP-
16 MENT LAW. NOT LESS OFTEN THAN ANNUALLY, THE AUTHORITY SHALL IDENTIFY AND
17 ADVISE THE ECONOMIC DEVELOPMENT POWER ALLOCATION BOARD OF THE AVAILABIL-
18 ITY OF THE FUNDS FOR SUCH AWARD.

19 S 14. Section 1005 of the public authorities law is amended by adding
20 two new subdivisions 17 and 18 to read as follows:

21 17. TO PROMOTE THE CONSERVATION AND EFFICIENT USE OF ELECTRICITY, THE
22 POWER AUTHORITY OF THE STATE OF NEW YORK SHALL UNDERTAKE OR CAUSE TO BE
23 UNDERTAKEN ENERGY AUDITS AS A CONDITION FOR AN AWARD UNDER THE POWER
24 SOLUTIONS PROGRAM. ENERGY AUDITS SHALL BE CONDUCTED FOR THOSE APPLICANTS
25 THAT THE BOARD HAS DETERMINED ELIGIBLE TO RECEIVE A POWER SOLUTIONS
26 AWARD. THE AUDITS SHALL ASSESS (I) A RECIPIENT'S ELECTRICITY USE TO
27 DETERMINE BASED ON A COMPARISON OF THE NORMS OF THEIR SPECIFIC INDUSTRY,
28 COST-EFFECTIVE MEASURES THAT COULD BE EMPLOYED TO REDUCE ENERGY COSTS,
29 ENERGY USE, OR IMPROVE THE EFFICIENCY OF BUILDINGS, BUILDING SYSTEMS,
30 EQUIPMENT, PROCESSES OR OPERATIONS; AND (II) THE FEASIBILITY OF ONSITE
31 POWER GENERATION FOR COMBINED HEAT AND POWER AND/OR DISTRIBUTED GENER-
32 ATION PURPOSES. APPLICANTS' ENERGY AUDITS PERFORMED UP TO FIVE YEARS
33 PRIOR TO THE DATE OF APPLICATION SUBMISSION MAY BE CONSIDERED. COSTS OF
34 THE ENERGY AUDITS SHALL BE PAID BY THE POWER AUTHORITY OF THE STATE OF
35 NEW YORK AS DEEMED FEASIBLE AND ADVISABLE BY THE BOARD. FOR PURPOSES OF
36 IMPLEMENTING THIS SUBDIVISION ONLY, THE POWER AUTHORITY OR ITS AGENT IS
37 AUTHORIZED TO APPLY FOR FUNDING FROM ANY PROGRAM THAT PAYS ALL OR SOME
38 OF THE COSTS OF SUCH AUDITS, AND THE POWER AUTHORITY OR ITS AGENT SHALL
39 BE ENTITLED TO RECEIVE SUCH FUNDING AS IF THE RECIPIENT OF SUCH LOW-COST
40 POWER HAD APPLIED FOR THE FUNDING DIRECTLY.

41 18. A. FOR THE PURPOSE OF FURNISHING THE STATE WITH SYSTEMATIC INFOR-
42 MATION REGARDING THE STATUS AND THE ACTIVITIES OF THE AUTHORITY, THE
43 AUTHORITY SHALL SUBMIT TO THE GOVERNOR, THE CHAIRPERSON OF THE SENATE
44 FINANCE COMMITTEE, THE CHAIRPERSON OF THE ASSEMBLY WAYS AND MEANS
45 COMMITTEE AND THE STATE COMPTROLLER, WITHIN NINETY DAYS AFTER THE END OF
46 ITS FISCAL YEAR, A COMPLETE AND DETAILED ANNUAL REPORT ON EACH ECONOMIC
47 DEVELOPMENT POWER PROGRAM IT ADMINISTERS. SUCH ANNUAL REPORT SHALL
48 INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING INFORMATION:

49 (I) THE NUMBER OF COMMERCIAL/INDUSTRIAL RECIPIENTS OF ECONOMIC POWER
50 PROGRAM BENEFITS, WHERE THE ECONOMIC REGION CLIENT IS LOCATED, WHAT TYPE
51 AND HOW MUCH ASSISTANCE IS PROVIDED, MEGAWATTS OF ELECTRICITY AWARDED,
52 LENGTH OF CURRENT CONTRACT, CURRENT CONTRACT COMPLIANCE STATUS, LAST
53 AUDIT, NUMBER OF JOBS RETAINED AND/OR ADDED IN THE FISCAL YEAR, APPROXI-
54 MATE ENERGY EFFICIENCY SAVINGS AND AMOUNT OF POWER REALLOCATED FROM
55 PREVIOUS YEARS DUE TO FORFEITED BENEFITS;

1 (II) COST TO THE AUTHORITY TO PROVIDE ECONOMIC DEVELOPMENT POWER
2 PROGRAMS DURING THE PREVIOUS FISCAL YEAR; AND

3 (III) SOURCES, TYPES AND COSTS OF POWER OBTAINED FOR EACH ECONOMIC
4 DEVELOPMENT POWER PROGRAM IT ADMINISTERS, INCLUDING, BUT NOT LIMITED TO,
5 AN EXPLANATION OF HOW POWER IS OBTAINED BY THE AUTHORITY TO SUPPORT EACH
6 ECONOMIC DEVELOPMENT POWER PROGRAM IT ADMINISTERS, THE PERCENTAGE OF
7 LONG- AND SHORT-TERM POWER PURCHASE AGREEMENTS USED AND DAY-AHEAD AND
8 SPOT MARKET PURCHASES, AND SUMMARY OF NEW YORK INDEPENDENT SYSTEM OPERA-
9 TOR (NYISO) CHARGES PAID BY AUTHORITY CUSTOMERS.

10 B. THE COMPTROLLER SHALL BE CHARGED WITH SEEING THAT THE REPORTS
11 MANDATED IN THIS SUBDIVISION ARE FILED ON TIME AND THAT THEY ARE SUFFI-
12 CIENTLY COMPREHENSIVE. THE COMPTROLLER SHALL REPORT ANY DEFICIENCIES TO
13 THE GOVERNOR AND TO THE LEGISLATIVE CHAIRS NAMED IN SUBDIVISION ONE OF
14 THIS SECTION.

15 S 15. Severability clause. If any clause, sentence, paragraph, subdi-
16 vision, section or part of this act shall be adjudged by any court of
17 competent jurisdiction to be invalid, such judgment shall not affect,
18 impair, or invalidate the remainder thereof, but shall be confined in
19 its operation to the clause, sentence, paragraph, subdivision, section
20 or part thereof directly involved in the controversy in which such judg-
21 ment shall have been rendered. It is hereby declared to be the intent of
22 the legislature that this act would have been enacted even if such
23 invalid provisions had not been included therewith.

24 S 16. This act shall take effect immediately; provided that the amend-
25 ments to section 183 of the economic development law made by sections
26 two, seven, eight and nine of this act shall be subject to the expira-
27 tion and reversion of such section pursuant to section 9 of chapter 316
28 of the laws of 1997, as amended, when upon such date the provisions of
29 section ten of this act shall take effect; and provided, further, that
30 the amendments to section 189 of the economic development law made by
31 sections three and four of this act shall not affect the repeal of such
32 section and shall be deemed repealed therewith.