

11172

I N A S S E M B L Y

May 21, 2010

Introduced by M. of A. CAHILL -- 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 and making certain provisions permanent; to amend the economic development law, in relation to the creation of the power solutions program; to amend the public authorities law, in relation to payments under the power solutions program and energy audits as a condition for an award under the economic development power award; to amend the tax law, in relation to credits for the power solution program; and to repeal certain provisions of the public authorities law relating thereto

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] TWELVE members, [two]
8 ONE OF WHOM SHALL BE THE PRESIDENT OF THE URBAN DEVELOPMENT CORPORATION
9 AND FIVE of whom shall be appointed by the governor [and one] TWO of
10 whom shall be appointed by the speaker of the assembly [and one], TWO of
11 whom shall be appointed by the president pro tempore of the senate, ONE
12 OF WHOM SHALL BE APPOINTED BY THE MINORITY LEADER OF THE ASSEMBLY AND
13 ONE OF WHOM SHALL BE APPOINTED BY THE MINORITY LEADER OF THE SENATE.
14 Each member shall be appointed for terms of three years or until a
15 successor shall have been named and qualified. The chairman shall be

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

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1 [designated by the governor from amongst the members] THE PRESIDENT OF
2 THE URBAN DEVELOPMENT CORPORATION. [Three] SEVEN members shall consti-
3 tute a quorum for the purposes of organizing the board and conducting
4 the business thereof; and no actions of the board may be taken except
5 upon the affirmative vote of at least [three] SEVEN members. Videocon-
6 ferencing may be used for attendance and participation by members of the
7 board. If videoconferencing is used the board shall provide an opportu-
8 nity for the public to attend, listen and observe at any site at which a
9 member participates. The public notice for the meeting shall inform the
10 public that [vidioconferencing] VIDEOCONFERENCING will be used, identify
11 the locations for the meeting, and state that the public has the right
12 to attend the meeting at any of the locations. Members of the board,
13 except those who are employees or officers of the state, its authorities
14 or agencies shall not receive a salary or other compensation, but shall
15 be allowed the necessary and actual expenses incurred in the performance
16 of duties under this article.

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

20 "Power for jobs electricity savings reimbursements" shall mean
21 payments made by the power authority of the state of New York as recom-
22 mended by the board to recipients of allocations of power under phases
23 four and five of the power for jobs program for a period of time until
24 November thirtieth, two thousand four, subsequent to the expiration of
25 their phase four or five power for jobs contract provided however that
26 any power for jobs recipient may choose to receive an electricity
27 savings reimbursement as a substitute for a contract extension for the
28 period from the date the recipient's contract expires through [May
29 fifteenth] JUNE THIRTIETH, two thousand [ten] ELEVEN. The "basic
30 reimbursement" is an amount that when credited against the recipient's
31 actual "unit cost of electricity" during a quarter (meaning the cost for
32 commodity and delivery per kilowatt-hour for the quantity of electricity
33 purchased and delivered under the power for jobs program during a simi-
34 lar period in the final year of the recipient's contract), results in an
35 effective unit cost of electricity during the quarter equal to the aver-
36 age unit cost of electricity such recipient paid during the final year
37 of the contract for power allocated under phase four or five of the
38 power for jobs program.

39 S 3. Subdivisions (f) and (l) of section 189 of the economic develop-
40 ment law, as amended by chapter 217 of the laws of 2009, are amended to
41 read as follows:

42 (f) Eligibility. The board shall recommend applications for allo-
43 cations of power under the power for jobs program to or for the use of
44 businesses which normally utilize a minimum peak electric demand in
45 excess of four hundred kilowatts; provided, however, that up to one
46 hundred megawatts of power available for allocation during the initial
47 three phases of the power for jobs program may be recommended for allo-
48 cations to not-for-profit corporations and to small businesses; and,
49 provided, further that up to seventy-five megawatts of power available
50 for allocation during the fourth phase of the program may be recommended
51 for allocations to not-for-profit corporations and to small businesses.
52 The board may require small businesses that normally utilize a minimum
53 peak electric demand of less than one hundred kilowatts to aggregate
54 their electric demand in amounts of no less than one hundred kilowatts,
55 for the purposes of applying to the board for an allocation of power.
56 The board shall recommend allocations of the additional three hundred

1 megawatts available during the fourth phase of the program to any such
2 eligible applicant, including any recipient of power allocated during
3 the first phase of the program. The board shall recommend allocations of
4 the additional one hundred eighty-three megawatts available during the
5 fifth phase of the program to any eligible applicant, including any
6 recipient of power allocated during the second and third phases of the
7 program; provided, however, that the term of contracts for allocations
8 under the fifth phase of the program shall in no case extend beyond [May
9 fifteenth] JUNE THIRTIETH, two thousand [ten] ELEVEN. Notwithstanding
10 any provision of law to the contrary, and, in particular, the provisions
11 of this chapter concerning the terms of contracts for allocations under
12 the power for jobs program, the terms of any contract with a recipient
13 of power allocated under phase two of the power for jobs program that
14 has expired or will expire on or before the thirty-first day of August,
15 two thousand two, may be extended by the power authority of the state of
16 New York for an additional period of three months effective on the date
17 of such expiration, pending the filing and approval of an application by
18 such recipient for an allocation under the fifth phase of the program.
19 The term of any new contract with such recipient under the fifth phase
20 of the program shall be deemed to include any three month contract
21 extension made pursuant to this subdivision and the termination date of
22 any such new contract under phase five shall be no later than if such
23 new contract had commenced upon the expiration of the recipient's
24 original phase two contract. The terms of any contract with a recipient
25 of power allocated under phase four and/or phase five of the power for
26 jobs program that has expired or will expire on or before the thirty-
27 first day of December, two thousand five, may be extended by the power
28 authority of the state of New York from a date beginning no earlier than
29 the first day of December, two thousand four and extending through [May
30 fifteenth] JUNE THIRTIETH, two thousand [ten] ELEVEN.

31 (1) The board shall solicit and review applications for the power for
32 jobs electricity savings reimbursements and contract extensions from
33 recipients of power for jobs allocations under phases four and five of
34 the program for the award of such reimbursements and/or contract exten-
35 sions. The board may prescribe a simplified form and content for an
36 application for such reimbursements or extensions. An applicant shall be
37 eligible for such reimbursements and/or extensions only if it is in
38 compliance with and agrees to continue to meet the job retention and
39 creation commitments set forth in its prior power for jobs contract, or
40 such other commitments as the board deems reasonable; provided, however,
41 that for the power for jobs electricity savings reimbursements and
42 contract extensions granted on or after June thirtieth, two thousand
43 nine through [May fifteenth] JUNE THIRTIETH, two thousand [ten] ELEVEN,
44 the board shall expedite the awarding of such reimbursements and/or
45 extensions and shall defer the review of compliance with such commit-
46 ments until after the applicant has been awarded a power for jobs elec-
47 tricity savings reimbursement and/or contract extension. The board shall
48 review such applications and make recommendations for the award: 1. of
49 such reimbursements through the power authority of the state of New York
50 for a period of time up to November thirtieth, two thousand four, and 2.
51 of such contract extensions or reimbursements as applied for by the
52 recipient for a period of time beginning December first, two thousand
53 four and ending [May fifteenth] JUNE THIRTIETH, two thousand [ten] ELEV-
54 EN. At no time shall a recipient receive both a reimbursement and
55 extension after December first, two thousand four. The power authority
56 of the state of New York shall receive notification from the board

1 regarding the award of power for jobs electricity savings reimbursements
2 and/or contract extensions.

3 S 4. Section 9 of chapter 316 of the laws of 1997 amending the public
4 authorities law and other laws relating to the provision of low cost
5 power to foster statewide economic development, as amended by chapter
6 217 of the laws of 2009, is amended to read as follows:

7 S 9. This act shall take effect immediately [and]; PROVIDED HOWEVER
8 THAT SECTIONS ONE, TWO, THREE, FIVE AND SIX OF THIS ACT shall expire and
9 be deemed repealed [May 15, 2010] JUNE 30, 2011.

10 S 5. Section 11 of chapter 645 of the laws of 2006 amending the
11 economic development law and other laws relating to reauthorizing the
12 New York power authority to make contributions to the general fund, as
13 amended by chapter 217 of the laws of 2009, is amended to read as
14 follows:

15 S 11. This act shall take effect immediately and shall be deemed to
16 have been in full force and effect on and after April 1, 2006; provided,
17 however, that the amendments to section 183 of the economic development
18 law and subparagraph 2 of paragraph g of the ninth undesignated para-
19 graph of section 1005 of the public authorities law made by sections two
20 and six of this act shall not affect the expiration of such section and
21 subparagraph, respectively, and shall be deemed to expire therewith;
22 provided further, however, that the amendments to section 189 of the
23 economic development law and subdivision 9 of section 186-a of the tax
24 law made by sections three, four, five and ten of this act shall not
25 affect the repeal of such section and subdivision, respectively, and
26 shall be deemed to be repealed therewith; provided further, however,
27 that section seven of this act shall expire and be deemed repealed [May
28 15, 2010] JUNE 30, 2011.

29 S 6. Section 183 of the economic development law, as amended by chap-
30 ter 316 of the laws of 1997, subdivision (g) as amended by chapter 226
31 of the laws of 2002, subdivision (h) as added by chapter 313 of the laws
32 of 2005 and paragraphs 2 and 4 of subdivision (h) as amended by chapter
33 217 of the laws of 2009, is amended to read as follows:

34 S 183. General powers and duties of the board. In furtherance of the
35 purposes set forth in this article, the board shall have the following
36 powers:

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

42 (b) To evaluate applications for allocations of economic development
43 power and of power under the power for jobs program AND THE POWER
44 SOLUTIONS PROGRAM and to make recommendations with respect to such
45 proposed allocations; PROVIDED HOWEVER, THAT THE BOARD SHALL NOT ACCEPT
46 ANY NEW APPLICATION THAT REQUESTS AN ALLOCATION OF POWER UNDER THE POWER
47 FOR JOBS PROGRAM AFTER JUNE THIRTIETH, TWO THOUSAND ELEVEN.

48 (c) To evaluate economic development plans for the use of industrial
49 incentive awards submitted by the power authority of the state of New
50 York pursuant to this article.

51 (d) To provide advice and assistance when appropriate to applicants on
52 state economic development programs and services in addition to the
53 economic development power and power under the power [for jobs]
54 SOLUTIONS program and industrial incentive awards specifically provided
55 for in this section.

1 (e) In consultation with the department of public service, to estab-
2 lish and develop guidelines for a competitive procurement process as
3 provided in subdivision (c) of section one hundred eighty-nine of this
4 article.

5 (f) TO SOLICIT APPLICATIONS FOR AWARDS UNDER THE POWER SOLUTIONS
6 PROGRAM, AND MAKE RECOMMENDATIONS TO THE POWER AUTHORITY OF THE STATE OF
7 NEW YORK FOR AWARDS UNDER SUCH PROGRAM IN THE MANNER AUTHORIZED IN
8 SECTION ONE HUNDRED EIGHTY-EIGHT-A OF THIS ARTICLE.

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

18 (g) [The] EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE board
19 shall solicit applications for economic development power and for power
20 under the power [for jobs] SOLUTIONS program by public notice. Such
21 notice shall be in the form of newspaper advertisements, press releases,
22 and by such other means as the board finds appropriate. Solicitations of
23 [preliminary] applications for power under the power for jobs program
24 shall begin [promptly after the effective date of chapter three hundred
25 sixteen of the laws of nineteen hundred ninety-seven establishing such
26 program. The board shall solicit applications for the additional three
27 hundred megawatts of power available during the fourth phase of the
28 program by public notice, written notification to each recipient of
29 power allocated during the first phase of the program, and such other
30 means as the board finds appropriate. Solicitations of applications for
31 such three hundred megawatts of power available in phase four of the
32 program shall begin promptly after the effective date of part KK of
33 chapter sixty-three of the laws of two thousand making such power avail-
34 able. The board shall solicit applications for the additional one
35 hundred eighty-three megawatts of power available during the fifth phase
36 of the program by public notice, written notification to each recipient
37 of power allocated during the second and third phases of the program,
38 and by such other means as the board finds appropriate. Solicitations
39 for such one hundred eighty-three megawatts of power available in phase
40 five of the program shall begin promptly after the effective date of the
41 chapter of the laws of two thousand two making such power available]
42 JANUARY THIRTY-FIRST, TWO THOUSAND ELEVEN.

43 (h) 1. The board shall solicit applications for and make recommenda-
44 tions for approval of energy cost savings benefits [in amounts made
45 available pursuant to the twelfth undesignated paragraph of section one
46 thousand five of the public authorities law] BEGINNING JANUARY
47 THIRTY-FIRST, TWO THOUSAND ELEVEN for the purpose of lowering the cost
48 of electricity to eligible businesses.

49 2. [During the period commencing] COMMENCING on November first, two
50 thousand five [and ending on May fifteenth, two thousand ten] eligible
51 businesses shall only include customers served under the power authority
52 of the state of New York's high load factor, economic development power
53 and other business customers served by political subdivisions of the
54 state authorized by law to engage in the distribution of electric power
55 [that were authorized to be served by the authority from the authority's
56 former James A. Fitzpatrick nuclear power plant as of the effective

1 date of this subdivision whose power prices may be subject to increase
2 before May fifteenth, two thousand ten. Provided, however, that the
3 total amount of megawatts of replacement and preservation power which,
4 due to the extension of the energy cost savings benefits, are not relin-
5 quished by or withdrawn from a recipient shall be deemed to be relin-
6 quished or withdrawn for purposes of offering such megawatts by the
7 authority for reallocation pursuant to subdivision thirteen of section
8 one thousand five of the public authorities law. Provided, further, that
9 for any such reallocation, the authority shall maintain the same energy
10 cost savings benefit level for all eligible businesses using any avail-
11 able authority resources as deemed feasible and advisable by the trus-
12 tees pursuant to section seven of part U of chapter fifty-nine of the
13 laws of two thousand six].

14 3. Each application for an energy cost savings benefit shall be evalu-
15 ated under criteria adopted by the board in consultation with the power
16 authority of the state of New York, which criteria shall be designed to
17 promote economic development, maintain and develop jobs, and encourage
18 new capital investment throughout the state of New York. Such criteria
19 shall address but need not be limited to:

20 (a) the overall economic impact of the applicant in terms of the
21 number of jobs to be created or retained, average annual payroll, capi-
22 tal investment and use of New York state suppliers;

23 (b) the likelihood that in the absence of approval of an energy cost
24 savings benefit, the applicant would close, contract or relocate outside
25 the state of New York;

26 (c) the applicant's compliance with the commitment to retain and/or
27 create jobs contained in its prior power contract with the power author-
28 ity of the state of New York; and

29 (d) the extent to which an energy cost savings benefit will affect the
30 overall productivity or competitiveness of the applicant's business and
31 its existing employment within the state.

32 (E) THE EXTENT TO WHICH THE APPLICANT HAS PREVIOUSLY UNDERTAKEN ENERGY
33 AUDITS AND/OR INVESTED IN ENERGY EFFICIENCY MEASURES INCLUDING CONSIDER-
34 ATION OF THE TIMING OF SUCH AUDITS OR MEASURES, THE AMOUNT OF INVEST-
35 MENTS IN ENERGY EFFICIENCY RELATIVE TO THE SIZE, NATURE AND HISTORIC
36 ENERGY CONSUMPTION, AND OTHER CAPITAL INVESTMENTS OF THE BUSINESS, THE
37 RELATIVE IMPROVEMENT IN ENERGY EFFICIENCY AND/OR NET ENERGY OR FINANCIAL
38 SAVINGS RESULTING FROM SUCH INVESTMENTS, AND SUCH OTHER FACTORS AS THE
39 BOARD MAY CONSIDER APPROPRIATE, AND/OR THE EXTENT TO WHICH THE APPLICANT
40 WILL AGREE, IF RECOMMENDED BY THE BOARD, TO COMMIT TO MAKING COST EFFEC-
41 TIVE TANGIBLE INVESTMENTS IN ENERGY EFFICIENCY MEASURES;

42 (F) THE BOARD MAY ALSO CONSIDER THE EXTENT TO WHICH THE APPLICANT HAS
43 INVESTED IN ONSITE POWER GENERATION FOR COMBINED HEAT AND POWER AND/OR
44 DISTRIBUTED GENERATION PURPOSES OR WILL AGREE, IF RECOMMENDED BY THE
45 BOARD, TO CONSIDER MAKING COST EFFECTIVE TANGIBLE INVESTMENTS IN ONSITE
46 POWER GENERATION FOR COMBINED HEAT AND POWER AND/OR DISTRIBUTED GENER-
47 ATION PURPOSES AS IDENTIFIED PURSUANT TO SUBDIVISION SEVENTEEN OF
48 SECTION ONE THOUSAND FIVE OF THE PUBLIC AUTHORITIES LAW AS A CONDITION
49 TO RECEIVING AN AWARD; PROVIDED HOWEVER, THAT IN NO EVENT SHALL THE
50 ABSENCE OF SUCH INVESTMENT OR CONSIDERATION COUNT AGAINST THE APPLI-
51 CANT'S ELIGIBILITY FOR AN AWARD.

52 4. Applications for an energy cost savings benefit shall be in the
53 form and contain such information, exhibits and supporting data as the
54 board may prescribe. The board shall review the applications received
55 and shall determine the applications which best meet the criteria estab-
56 lished for the benefits pursuant to this subdivision and it shall recom-

1 mend such applications to the power authority of the state of New York
2 with such terms and conditions as it deems appropriate; provided, howev-
3 er, that for energy cost savings benefits granted on or after June thir-
4 tieth, two thousand nine through May fifteenth, two thousand ten, the
5 board shall expedite the awarding of such benefits and shall defer the
6 review of compliance with such criteria until after the applicant has
7 been awarded an energy cost savings benefit. Such terms and conditions
8 shall include reasonable provisions providing for the partial or
9 complete withdrawal of the energy cost savings benefit in the event the
10 recipient fails to maintain mutually agreed upon commitments that may
11 include, but are not limited to, levels of employment, capital invest-
12 ment, ENERGY EFFICIENCY MEASURES and power utilization. Recommendation
13 for approval of an energy cost savings benefit shall qualify an appli-
14 cant to receive an energy cost savings benefit from the power authority
15 of the state of New York pursuant to the terms and conditions of the
16 recommendation.

17 5. The transfer of an energy cost savings benefit shall be prohibited
18 unless specifically approved by the board as consistent with the crite-
19 ria established pursuant to this paragraph. Any transfer which occurs
20 without the board's approval shall be invalid and such transfer may
21 subject the recipient to revocation of its benefit and modification or
22 revocation of its contract.

23 S 7. The economic development law is amended by adding a new section
24 188-a to read as follows:

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

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

29 (B) "AUTHORITY" SHALL MEAN THE POWER AUTHORITY OF THE STATE OF NEW
30 YORK.

31 (C) "POWER SOLUTIONS AWARD" OR "AWARD" SHALL MEAN AN ALLOCATION OF
32 POWER OR AN AWARD PAID BY THE AUTHORITY PURSUANT TO SECTION ONE THOUSAND
33 FIVE OF THE PUBLIC AUTHORITIES LAW IN THE FORM OF AN ELECTRIC BILL CRED-
34 IT ON THE INVOICE PROVIDED BY THE RECIPIENT'S LOCAL DISTRIBUTOR OF ELEC-
35 TRIC SERVICE PURSUANT TO THE POWER SOLUTIONS PROGRAM CREATED BY THIS
36 SECTION AND/OR THE PROVISION OF ENERGY RELATED PROJECTS, PROGRAMS AND
37 SERVICES AS DEFINED IN SUBDIVISION SIXTEEN OF SECTION ONE THOUSAND FIVE
38 OF THE PUBLIC AUTHORITIES LAW.

39 (D) "ELIGIBLE APPLICANT" SHALL MEAN AN ELIGIBLE BUSINESS, ELIGIBLE
40 SMALL BUSINESS, OR ELIGIBLE NOT-FOR-PROFIT CORPORATION AS DEFINED IN
41 THIS SECTION.

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

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

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

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

54 2. APPLICATIONS. (A) THE BOARD SHALL SOLICIT APPLICATIONS FOR AWARDS
55 UNDER THE POWER SOLUTIONS PROGRAM BY PUBLIC NOTICE BEGINNING ON JANUARY
56 FIRST, TWO THOUSAND ELEVEN. SUCH NOTICE MAY INCLUDE NEWSPAPER ADVER-

1 TISEMENTS, PRESS RELEASES, WEBSITE POSTINGS, PAPER OR ELECTRONIC MAIL-
2 ING, AND/OR SUCH OTHER FORM AS THE BOARD FINDS APPROPRIATE IN CONSULTA-
3 TION WITH THE AUTHORITY.

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

8 (C) SUBJECT TO CONFIDENTIALITY REQUIREMENTS, UPON RECEIPT OF EACH
9 APPLICATION BY THE AUTHORITY, THE AUTHORITY SHALL PROMPTLY NOTIFY BY
10 ELECTRONIC MEANS THE GOVERNOR, THE SPEAKER OF THE ASSEMBLY, THE MINORITY
11 LEADER OF THE ASSEMBLY, THE TEMPORARY PRESIDENT OF THE SENATE, THE
12 MINORITY LEADER OF THE SENATE, AND EACH MEMBER OF THE STATE LEGISLATURE
13 IN WHOSE DISTRICT ANY PORTION OF THE FACILITY OWNED OR OPERATED BY THE
14 APPLICANT IS LOCATED. SUCH NOTICE SHALL PROVIDE THE NAME AND A
15 DESCRIPTION OF THE APPLICANT, AND THE ADDRESS OF THE APPLICANT'S FACILI-
16 TIES THAT WOULD RECEIVE AN AWARD UNDER THE PROGRAM. THE AUTHORITY SHALL
17 ALSO DEVELOP A LISTING WHICH CONTAINS THE NAME AND A DESCRIPTION OF EACH
18 APPLICANT, THE AWARD SOUGHT BY EACH APPLICANT, AND THE ADDRESS OF THE
19 FACILITIES FOR WHICH THE APPLICANT SEEKS THE AWARD, AND MAKE THE LISTING
20 AVAILABLE FOR PUBLIC REVIEW ON THE AUTHORITY'S WEBSITE.

21 3. REVIEW, APPLICABLE CRITERIA AND RECOMMENDATIONS. (A) THE BOARD
22 SHALL REVIEW APPLICATIONS SUBMITTED UNDER THE POWER SOLUTIONS PROGRAM.
23 THE BOARD SHALL MAKE AN INITIAL DETERMINATION OF WHETHER THE APPLICANT
24 IS AN ELIGIBLE APPLICANT. THE BOARD MAY RECOMMEND TO THE AUTHORITY THAT
25 A POWER SOLUTIONS PROGRAM AWARD BE AWARDED TO AN APPLICANT BASED ON AN
26 APPLICATION OF THE FOLLOWING CRITERIA:

27 (I) THE SIGNIFICANCE OF THE COST OF ELECTRICITY TO THE APPLICANT'S
28 OVERALL COST OF DOING BUSINESS, AND THE IMPACT THAT A POWER SOLUTIONS
29 AWARD WILL HAVE ON THE APPLICANT'S OPERATING COSTS;

30 (II) THE EXTENT TO WHICH A POWER SOLUTIONS AWARD WILL RESULT IN NEW
31 CAPITAL INVESTMENT IN THE STATE BY THE APPLICANT, THE EXTENT TO WHICH
32 THE APPLICANT WILL AGREE TO COMMIT TO MAKING NEW CAPITAL INVESTMENT AS A
33 CONDITION TO RECEIVING A POWER SOLUTIONS AWARD, AND ANY PREVIOUS CAPITAL
34 INVESTMENT UNDERTAKEN BY THE APPLICANT UNDER OTHER ECONOMIC DEVELOPMENT
35 PROGRAMS WHERE APPLICABLE;

36 (III) THE SIZE OF THE APPLICANT'S TOTAL PAYROLL (SALARY, BENEFITS AND
37 THE NUMBER OF JOBS) WITHIN THE STATE AND AT THE FACILITY THAT WOULD
38 RECEIVE THE AWARD;

39 (IV) THE NUMBER OF JOBS THAT WILL BE CREATED OR RETAINED WITHIN THE
40 STATE IN RELATION TO THE REQUESTED POWER SOLUTIONS AWARD, AND THE EXTENT
41 TO WHICH THE APPLICANT WILL AGREE TO COMMIT TO CREATING OR RETAINING
42 SUCH JOBS AS A CONDITION TO RECEIVING A POWER SOLUTIONS AWARD;

43 (V) WHETHER THE APPLICANT, DUE TO THE HIGH COST OF ELECTRICITY, IS AT
44 RISK OF CLOSING FACILITIES OR OPERATIONS IN THE STATE, RELOCATING FACIL-
45 ITIES OR OPERATIONS OUT OF THE STATE, OR LOSING A SIGNIFICANT NUMBER OF
46 JOBS IN THE STATE, IN THE ABSENCE OF A POWER SOLUTIONS AWARD;

47 (VI) THE SIGNIFICANCE OF THE APPLICANT'S FACILITY THAT WOULD RECEIVE
48 THE BENEFIT OF THE AWARD TO THE ECONOMY OF THE AREA IN WHICH SUCH FACIL-
49 ITY IS LOCATED;

50 (VII) THE EXTENT TO WHICH THE APPLICANT HAS PREVIOUSLY UNDERTAKEN
51 ENERGY AUDITS AND/OR INVESTED IN ENERGY EFFICIENCY MEASURES INCLUDING
52 CONSIDERATION OF THE TIMING OF SUCH AUDITS OR MEASURES, THE AMOUNT OF
53 INVESTMENTS IN ENERGY EFFICIENCY RELATIVE TO THE SIZE, NATURE AND
54 HISTORIC ENERGY CONSUMPTION, AND OTHER CAPITAL INVESTMENTS OF THE BUSI-
55 NESS, THE RELATIVE IMPROVEMENT IN ENERGY EFFICIENCY AND/OR NET ENERGY OR
56 FINANCIAL SAVINGS RESULTING FROM SUCH INVESTMENTS, AND SUCH OTHER

1 FACTORS AS THE BOARD MAY CONSIDER APPROPRIATE, AND/OR THE EXTENT TO
2 WHICH THE APPLICANT WILL AGREE, IF RECOMMENDED BY THE BOARD, TO COMMIT
3 TO MAKING COST EFFECTIVE TANGIBLE INVESTMENTS IN ENERGY EFFICIENCY MEAS-
4 URES;

5 (VIII) THE EXTENT TO WHICH THE APPLICANT'S OPERATIONS ARE CONSISTENT
6 WITH THE POLICIES AND GOALS OF THE STATE ENERGY PLAN;

7 (IX) THE EXTENT TO WHICH THE APPLICANT PREVIOUSLY RECEIVED BENEFITS
8 UNDER OTHER POWER-RELATED PROGRAMS OF THE AUTHORITY, AND THE APPLICANT'S
9 PRIOR PERFORMANCE UNDER SUCH PROGRAMS WHERE APPLICABLE;

10 (X) IN THE CASE OF A NOT-FOR-PROFIT CORPORATION, WHETHER IT PROVIDES
11 CRITICAL SERVICES OR SUBSTANTIAL BENEFITS TO THE LOCAL COMMUNITY;

12 (XI) THE EXTENT TO WHICH AN AWARD IS CONSISTENT WITH STATE, REGIONAL
13 AND LOCAL ECONOMIC DEVELOPMENT STRATEGIES AND SUPPORTED BY LOCAL UNITS
14 OF GOVERNMENT IN THE AREA IN WHICH THE BUSINESS IS LOCATED OR TO BE
15 LOCATED;

16 (XII) THE EXTENT TO WHICH AN AWARD MIGHT RESULT IN INEQUITY FOR AN
17 APPLICANT AS COMPARED TO ITS COMPETITORS WITHIN THE STATE;

18 (XIII) IMPACT OF CURRENT ECONOMIC CONDITIONS ON THE APPLICANT;

19 (XIV) THE BOARD MAY ALSO CONSIDER THE EXTENT TO WHICH THE APPLICANT
20 HAS INVESTED IN ONSITE POWER GENERATION FOR COMBINED HEAT AND POWER
21 AND/OR DISTRIBUTED GENERATION PURPOSES OR WILL AGREE, IF RECOMMENDED BY
22 THE BOARD, TO CONSIDER MAKING COST EFFECTIVE TANGIBLE INVESTMENTS IN
23 ONSITE POWER GENERATION FOR COMBINED HEAT AND POWER AND/OR DISTRIBUTED
24 GENERATION PURPOSES AS IDENTIFIED PURSUANT TO SUBDIVISION SEVENTEEN OF
25 SECTION ONE THOUSAND FIVE OF THE PUBLIC AUTHORITIES LAW AS A CONDITION
26 TO RECEIVING AN AWARD; PROVIDED HOWEVER, THAT IN NO EVENT SHALL THE
27 ABSENCE OF SUCH INVESTMENT OR CONSIDERATION COUNT AGAINST THE APPLI-
28 CANT'S ELIGIBILITY FOR AN AWARD; AND

29 (XV) THE EXTENT OF THE APPLICANT'S WILLINGNESS TO MAKE
30 JOBS AVAILABLE TO PERSONS DEFINED AS ELIGIBLE FOR SERVICES UNDER THE
31 FEDERAL WORKFORCE INVESTMENT ACT (P.L. 105-220) AND THE EXTENT OF THE
32 APPLICANT'S WILLINGNESS TO ENHANCE, TO THE DEGREE PRACTICABLE, THE
33 PARTICIPATION OF SMALL BUSINESS CONCERNS AND MINORITY AND WOMEN-OWNED
34 BUSINESSES CERTIFIED PURSUANT TO ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW.

35 (B) A RECOMMENDATION BY THE BOARD THAT THE AUTHORITY PROVIDE A POWER
36 SOLUTIONS PROGRAM AWARD TO AN ELIGIBLE APPLICANT SHALL INCLUDE: (1) A
37 DESCRIPTION OF THE AWARD THAT THE BOARD HAS DETERMINED SHOULD BE AWARDED
38 TO SUCH APPLICANT, PROVIDED HOWEVER, THAT THE BOARD MAY RECOMMEND AN
39 AWARD THAT DIFFERS FROM THE AWARD REQUESTED BY AN ELIGIBLE APPLICANT;
40 (2) AN EFFECTIVE TERM OF CONTRACT BETWEEN THE ELIGIBLE APPLICANT AND THE
41 AUTHORITY WHICH SHALL NOT EXCEED SEVEN YEARS, PROVIDED HOWEVER THAT THE
42 TERM OF ANY SUCH CONTRACT SHALL NOT BECOME EFFECTIVE BEFORE JULY FIRST,
43 TWO THOUSAND ELEVEN; (3) THE DATE OF THE MANDATORY MIDCONTRACT COMPLI-
44 ANCE REVIEW AT WHICH TIME THE ELIGIBLE APPLICANT, IF FOUND IN COMPLIANCE
45 MAY APPLY FOR A SUBSEQUENT CONTRACT TO GO INTO EFFECT AT THE CONCLUSION
46 OF THE CURRENT CONTRACT AS LONG AS COMPLIANCE CONTINUES THROUGH THE
47 CONCLUSION OF SUCH CONTRACT; AND (4) SUCH OTHER TERMS AND CONDITIONS
48 THAT THE BOARD RECOMMENDS AS APPROPRIATE. SUCH TERMS AND CONDITIONS
49 SHALL INCLUDE PROVISIONS FOR EFFECTIVE PERIODIC AUDITS OF PROGRAM
50 PARTICIPANTS FOR THE PURPOSE OF DETERMINING CONTRACT AND PROGRAM COMPLI-
51 ANCE, AND THE PARTIAL OR COMPLETE WITHDRAWAL OF A POWER SOLUTIONS
52 PROGRAM AWARD IN THE CASE OF A PROGRAM PARTICIPANT THAT FAILS TO MAIN-
53 TAIN MUTUALLY AGREED UPON COMMITMENTS, INCLUDING BUT NOT LIMITED TO
54 LEVELS OF EMPLOYMENT, POWER UTILIZATION, CAPITAL INVESTMENTS, AND ENERGY
55 EFFICIENCY MEASURES.

1 (C) THE BOARD MAY BASE ITS RECOMMENDATION ON WHICH ELIGIBLE APPLICANTS
2 IT DETERMINES BEST MEET THE APPLICABLE CRITERIA; PROVIDED HOWEVER THAT
3 THE BOARD SHALL SET ASIDE A PORTION OF THE BENEFITS AVAILABLE UNDER THE
4 POWER SOLUTIONS PROGRAM IN AN AMOUNT NOT LESS THAN ONE HUNDRED MEGAWATTS
5 FOR ELIGIBLE SMALL BUSINESSES AND ELIGIBLE NOT-FOR-PROFIT CORPORATIONS.

6 (D) (I) A RECOMMENDATION FOR A POWER SOLUTIONS PROGRAM AWARD SHALL
7 QUALIFY AN APPLICANT TO ENTER INTO A CONTRACT WITH THE AUTHORITY TO
8 RECEIVE SUCH AWARD FROM THE AUTHORITY PURSUANT TO THE TERMS AND CONDI-
9 TIONS OF THE RECOMMENDATION OR ON SUCH OTHER TERMS AS THE AUTHORITY IN
10 CONSULTATION WITH THE BOARD DETERMINES TO BE APPROPRIATE INCLUDING SUCH
11 TERMS THAT MAY BE DEEMED APPROPRIATE AND/OR NECESSARY AS A RESULT OF THE
12 FINDINGS OF AN ENERGY AUDIT CONDUCTED PURSUANT TO SUBDIVISION SEVENTEEN
13 OF SECTION ONE THOUSAND FIVE OF THE PUBLIC AUTHORITIES LAW. PROVIDED
14 THAT AN APPLICANT'S FAILURE TO COMPLY WITH TERMS DEEMED NECESSARY AS A
15 RESULT OF THE FINDINGS OF SUCH AUDIT SHALL BE A BASIS TO FORFEIT AN
16 AWARD PROVIDED BY SUCH CONTRACT. IN THE EVENT THAT THE AWARD INCLUDES
17 THE PROVISION OF ENERGY RELATED PROJECTS, PROGRAMS AND SERVICES AS
18 DEFINED IN SUBDIVISION SIXTEEN OF SECTION ONE THOUSAND FIVE OF THE
19 PUBLIC AUTHORITIES LAW, THE CONTRACT SHALL ALLOW FOR REIMBURSEMENT FOR
20 COSTS TO AN ENTITY OTHER THAN THE POWER AUTHORITY OF THE STATE OF NEW
21 YORK SO LONG AS SUCH COSTS ARE DEEMED REASONABLE AND APPROPRIATE. SUCH
22 CONTRACTS SHALL PROVIDE THAT THE LOCAL DISTRIBUTOR OF ELECTRIC SERVICE
23 WILL PROVIDE CUSTOMER AND BILLING SERVICES UPON MUTUALLY AGREED TERMS
24 AND CONDITIONS.

25 (II) THE LOCAL DISTRIBUTOR OF ELECTRIC SERVICE SHALL PURCHASE SUCH
26 POWER AND DELIVER IT OR, WHERE A RECIPIENT ELECTS THE ENERGY SERVICE
27 COMPANY OPTION, TO PROVIDE DELIVERY SERVICES AT THE THEN CURRENT DELIV-
28 ERY RATE OR SERVICE CHARGE FOR ECONOMIC DEVELOPMENT POWER OR, IF NONE
29 EXISTS, AT A DELIVERY RATE SET BY THE APPROPRIATE JURISDICTIONAL REGULA-
30 TORY BODY.

31 (III) IF A LOCAL DISTRIBUTOR OF ELECTRIC SERVICE DECLINES TO PURCHASE
32 OR DELIVER POWER OFFERED UNDER THE POWER SOLUTIONS PROGRAM, IT SHALL
33 NONETHELESS DELIVER SUCH POWER TO THE CUSTOMERS SELECTED BY THE BOARD AT
34 THE CURRENT DELIVERY RATE FOR ECONOMIC DEVELOPMENT POWER OR, IF NONE
35 EXISTS, AT A DELIVERY RATE SET BY THE APPROPRIATE JURISDICTIONAL REGULA-
36 TORY BODY. REVENUE LOSSES RELATING TO SUCH TRANSACTIONS SHALL NOT GIVE
37 RISE TO THE TAX CREDITS AVAILABLE UNDER THE POWER SOLUTIONS PROGRAM WHEN
38 A UTILITY HAS DECLINED TO PURCHASE POWER ALLOCATED FOR SALE UNDER SUCH
39 PROGRAM.

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

44 (F) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, WITH RESPECT
45 TO APPLICANTS WHO AS OF JUNE FIRST, TWO THOUSAND ELEVEN, ARE IN SUBSTAN-
46 TIAL COMPLIANCE WITH ALL CONTRACTUAL COMMITMENTS AND RECEIVING BENEFITS
47 UNDER THE POWER FOR JOBS PROGRAM, BUT WOULD OTHERWISE NOT RECEIVE A
48 RECOMMENDATION FROM THE BOARD FOR A POWER SOLUTIONS PROGRAM AWARD, THE
49 BOARD SHALL RECOMMEND AND THE AUTHORITY SHALL PROVIDE AN AWARD OF THE
50 POWER SOLUTIONS PROGRAM AND SHALL PHASE OUT SUCH AWARD OVER A PERIOD NOT
51 TO EXCEED TWO YEARS ON THE FOLLOWING TERMS: IN THE FIRST YEAR, THE AWARD
52 SHALL BE IN AN AMOUNT THAT IS EQUAL TO SIXTY-SIX PERCENT OF THE VALUE OF
53 SUCH BENEFIT RECEIVED IN THE PRECEDING TWELVE MONTHS, AND IN THE SECOND
54 YEAR THE AWARD SHALL BE EQUAL TO THIRTY-THREE PERCENT OF THE VALUE OF
55 SUCH BENEFIT. NOTHING HEREIN SHALL PROHIBIT OR IN ANY WAY LIMIT ANY
56 APPLICANTS WHO ARE IN SUBSTANTIAL COMPLIANCE WITH ALL CONTRACTUAL

1 COMMITMENTS AND RECEIVING BENEFITS UNDER THE POWER FOR JOBS, ENERGY COST
2 SAVINGS BENEFIT, ECONOMIC DEVELOPMENT, HIGH LOAD FACTOR OR MUNICIPAL
3 DISTRIBUTION AGENCY PROGRAMS, WHETHER OR NOT THEY ARE RECIPIENTS OF A
4 TRANSITIONAL ELECTRICITY DISCOUNT PURSUANT TO THIS PARAGRAPH, FROM
5 APPLYING FOR OR RECEIVING AN ECONOMIC BENEFIT POWER AWARD FOR WHICH THEY
6 WOULD OTHERWISE QUALIFY, PROVIDED HOWEVER THAT THE RECEIPT OF AN ECONOM-
7 IC BENEFIT POWER AWARD BY AN APPLICANT SHALL BAR ANY FURTHER ELIGIBILITY
8 FOR A TRANSITIONAL ELECTRICITY DISCOUNT, AND NO APPLICANT SHALL RECEIVE
9 BOTH AN ECONOMIC BENEFIT POWER AWARD AND A TRANSITIONAL ELECTRICITY
10 DISCOUNT FOR THE SAME CALENDAR OR BILLING PERIOD.

11 (G) SUBJECT TO THE THIRTEENTH UNDESIGNATED PARAGRAPH OF SECTION ONE
12 THOUSAND FIVE OF THE PUBLIC AUTHORITIES LAW, AS ADDED BY THE CHAPTER OF
13 THE LAWS OF TWO THOUSAND TEN THAT ADDED THIS SECTION, THE BOARD SHALL
14 NOT RECOMMEND POWER SOLUTIONS PROGRAM AWARDS UNDER THE POWER SOLUTIONS
15 PROGRAM IN EXCESS OF FOUR HUNDRED EIGHTY-THREE MEGAWATTS OF ELECTRICITY
16 UNLESS ADDITIONAL MEGAWATTS BECOME AVAILABLE PURSUANT TO SUBDIVISION
17 FIVE OF SECTION ONE THOUSAND FIVE OF THE PUBLIC AUTHORITIES LAW. ANY
18 POWER SOLUTIONS AWARD WHICH IS RELINQUISHED OR WITHDRAWN SHALL BE AVAIL-
19 ABLE FOR REALLOCATION TO ELIGIBLE APPLICANTS.

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

31 (2) BETWEEN EVALUATION DUE DATES, THE BOARD SHALL MAINTAIN THE NECES-
32 SARY RECORDS AND DATA REQUIRED TO SATISFY SUCH EVALUATION REQUIREMENTS
33 AND TO SATISFY INFORMATION REQUESTS RECEIVED FROM THE DIRECTOR OF THE
34 BUDGET, THE CHAIRPERSON OF THE SENATE FINANCE COMMITTEE AND THE CHAIR-
35 PERSON OF THE ASSEMBLY WAYS AND MEANS COMMITTEE BETWEEN SUCH EVALUATION
36 DUE DATES.

37 S 8. Subparagraph 2 of paragraph g of the ninth undesignated paragraph
38 of section 1005 of the public authorities law, as amended by chapter 217
39 of the laws of 2009, is amended to read as follows:

40 2. The authority, as deemed feasible and advisable by the trustees, is
41 authorized to make payments to recipients of the power for jobs elec-
42 tricity savings reimbursements, POWER SOLUTIONS PROGRAM ELECTRICITY
43 SAVINGS REIMBURSEMENTS AND/OR PAYMENTS and additional annual voluntary
44 contributions into the state treasury to the credit of the general fund.
45 The authority shall make such contributions to the state treasury no
46 later than ninety days after the end of the calendar year in which a
47 credit under subdivision nine of section one hundred eighty-six-a of the
48 tax law is available: (a) for the additional three hundred megawatts of
49 power under the fourth phase of the program provided under chapter
50 sixty-three of the laws of two thousand and under the fifth phase for
51 the additional one hundred eighty-three megawatts provided under chapter
52 two hundred twenty-six of the laws of two thousand two; [and] (b) for
53 any extension of any contract for allocations under the fourth phase of
54 the program and under the fifth phase of the program; AND (C) FOR MEGA-
55 WATTS ALLOCATED UNDER THE POWER SOLUTIONS PROGRAM. Payments for any
56 electricity savings reimbursement under section one hundred eighty-nine

1 OR ONE HUNDRED EIGHTY-EIGHT-A of the economic development law shall be
2 made pursuant to such section. Such annual contributions shall be equal
3 to fifty percent of the total amount of such credits available each year
4 to all local distributors of electricity. In addition, such authori-
5 zation for contribution in state fiscal year two thousand two--two thou-
6 sand three shall be equal to the total amount of credit available in two
7 thousand one and two thousand two; and such authorization for contrib-
8 ution in state fiscal year two thousand three--two thousand four shall
9 be equal to the total amount of credit available in two thousand three;
10 under subdivision nine of section one hundred eighty-six-a of the tax
11 law under the fourth phase of the program for the additional three
12 hundred megawatts provided under chapter sixty-three of the laws of two
13 thousand and under the fifth phase for the additional one hundred eight-
14 y-three megawatts provided under chapter two hundred twenty-six of the
15 laws of two thousand two. In state fiscal year two thousand four--two
16 thousand five, such authorized annual contribution shall be equal to one
17 hundred percent of the total amount of such credits available each year
18 to all local distributors of electricity. Such authorization for
19 contribution in state fiscal years two thousand four and two thousand
20 five shall be equal to the total amount of credit available in two thou-
21 sand four and two thousand five; under subdivision nine of section one
22 hundred eighty-six-a of the tax law under the fourth phase of the
23 program for the additional three hundred megawatts provided under chap-
24 ter sixty-three of the laws of two thousand and under the fifth phase
25 for the additional one hundred eighty-three megawatts provided under
26 chapter two hundred twenty-six of the laws of two thousand two. In addi-
27 tion, such authorization for contribution for any extension of any
28 contract for allocations under the fourth phase of the program and under
29 the fifth phase of the program in each state fiscal year shall be equal
30 to the total amount of credit or reimbursement available in state fiscal
31 year two thousand four--two thousand five, state fiscal year two thou-
32 sand five--two thousand six and two thousand six--two thousand seven.
33 Additionally, notwithstanding any other section of law, the authority is
34 authorized to make a contribution in an amount related to total amounts
35 of credit received under phases one, two, three, four and five of the
36 program. In no case shall the contribution for state fiscal year two
37 thousand five--two thousand six be less than seventy-five million
38 dollars. The contribution for state fiscal year two thousand six--two
39 thousand seven shall be one hundred million dollars. The contribution
40 for state fiscal year two thousand seven--two thousand eight shall be
41 thirty million dollars. The contribution for state fiscal year two thou-
42 sand eight--two thousand nine shall be twenty-five million dollars. The
43 contribution for state fiscal year two thousand nine--two thousand ten
44 shall be twelve million five hundred thousand dollars. THE CONTRIBUTION
45 FOR EACH STATE FISCAL YEAR BEGINNING WITH TWO THOUSAND TEN--TWO THOUSAND
46 ELEVEN SHALL BE EQUAL TO THE AMOUNT OF THE CREDITS ALLOWED PURSUANT TO
47 SUBDIVISION NINE OF SECTION ONE HUNDRED EIGHTY-SIX-A OF THE TAX LAW. The
48 department of public service shall estimate the payment due by the end
49 of the calendar year in which the credit is available. In no case shall
50 the amount of the total annual contributions for the years during which
51 delivery and sale of power associated with all power for jobs phases and
52 any extensions thereof takes place exceed the aggregate total of four
53 hundred [sixty-one] SEVENTY-FOUR million [five hundred thousand]
54 dollars.

1 S 9. The twelfth undesignated paragraph of section 1005 of the public
2 authorities law is REPEALED and a new undesignated paragraph is added to
3 read as follows:

4 BEGINNING NO LATER THAN JULY FIRST, TWO THOUSAND ELEVEN, THE AUTHORITY
5 IS AUTHORIZED AND DIRECTED, AS DEEMED FEASIBLE AND ADVISABLE BY THE
6 TRUSTEES, TO MAKE ANNUAL PAYMENTS IN AN AMOUNT OF UP TO ONE HUNDRED
7 TWENTY MILLION DOLLARS FOR POWER SOLUTIONS PROGRAM AWARDS UPON THE
8 RECOMMENDATION OF THE ECONOMIC DEVELOPMENT POWER ALLOCATION BOARD UNDER
9 THE POWER SOLUTIONS PROGRAM AS PROVIDED IN SECTION ONE HUNDRED
10 EIGHTY-EIGHT-A OF THE ECONOMIC DEVELOPMENT LAW. NOT LESS OFTEN THAN
11 ANNUALLY, THE AUTHORITY SHALL IDENTIFY AND ADVISE THE ECONOMIC DEVELOP-
12 MENT POWER ALLOCATION BOARD OF THE AVAILABILITY OF THE FUNDS FOR SUCH
13 AWARD.

14 S 10. Subdivision 5 of section 1005 of the public authorities law, as
15 amended by chapter 294 of the laws of 1968, paragraph g as amended by
16 chapter 369 of the laws of 1974, is amended to read as follows:

17 5. To develop, maintain, manage and operate those parts of the Niagara
18 and Saint Lawrence hydroelectric projects owned or controlled by it in
19 such manner as to give effect to the policy hereby declared (and all
20 plans and acts, and all contracts for the use, sale, transmission and
21 distribution of the power generated by such projects, shall be made in
22 the light of, consistent with and subject to this policy), namely, that
23 such projects shall be in all respects for the aid, improvement, and
24 benefit of commerce and navigation in, through, along and past the
25 Niagara river, the Saint Lawrence river and the international rapids
26 section thereof, and that in the development of hydro-electric power
27 therefrom such projects shall, UNTIL THAT TIME WHEN THE AUTHORITY IMPLE-
28 MENTS THE ENERGY EFFICIENCY MEASURES FOR DOMESTIC AND RURAL CUSTOMERS
29 REQUIRED BY THIS SUBDIVISION be considered primarily as for the benefit
30 of the people of the state as a whole and particularly the domestic and
31 rural consumers to whom the power can economically be made available,
32 and accordingly that sale to and use by industry shall be a secondary
33 purpose UNTIL THE AUTHORITY IMPLEMENTS THE ENERGY EFFICIENCY MEASURES
34 FOR DOMESTIC AND RURAL CUSTOMERS REQUIRED BY THIS SUBDIVISION, AT WHICH
35 TIME THE SALE AND USE BY INDUSTRY MAY BECOME A PRIMARY PURPOSE, to be
36 utilized principally to secure a sufficiently high load factor and
37 revenue returns to permit domestic and rural use at the lowest possible
38 rates and in such manner as to encourage [increased] EFFICIENT domestic
39 and rural use of electricity. In furtherance of this policy and to
40 secure a wider distribution of such power and use of the greatest value
41 to the general public of the state, the authority shall in addition to
42 other methods which it may find advantageous make provision so that
43 municipalities and other political [sub-divisions] SUBDIVISIONS of the
44 state now or hereafter authorized by law to engage in the distribution
45 of electric power may secure a reasonable share of the power generated
46 by such projects, and shall sell the same or cause the same to be sold
47 to such municipalities and political subdivisions at prices representing
48 cost of generation, plus capital and operating charges, plus a fair cost
49 of transmission, all as determined by the trustees, and subject to
50 conditions which shall assure the resale of such power to domestic and
51 rural consumers at the lowest possible price, provided, however, that in
52 disposing of hydro-electric power pursuant to and in furtherance of the
53 aforementioned policy and purposes, appropriate provision may also be
54 made to allocate a reasonable share of project power to agencies created
55 or designated by other states and authorized to resell the power to
56 users under the same terms and conditions as power is disposed of in New

1 York state. To that end, the authority may provide in any contract or
2 contracts which it may make for the sale, transmission and distribution
3 of the power that the purchaser, transmitter or distributor shall
4 construct, maintain and operate, on such terms as the authority may deem
5 proper, such connecting lines as may be necessary for transmission of
6 the power from main transmission lines to such municipalities or poli-
7 tical subdivisions.

8 Contracts for the sale, transmission and distribution of power gener-
9 ated by such projects shall provide for the effectuation of the forego-
10 ing policy and shall provide:

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

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

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

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

18 e. Full and complete disclosure to the authority of all factors of
19 cost in the transmission and distribution of power, so that rates to
20 consumers may be fixed initially in the contract and may be adjusted
21 from time to time on the basis of true cost data, provided that in
22 fixing such cost of transmission and distribution no account shall be
23 given to any franchise value, going value or good-will based upon the
24 existence of the contract and the availability of the power for sale by
25 the transmitting or distributing company or any company associated ther-
26 ewith.

27 f. Periodic revisions of the service and rates to consumers on the
28 basis of accurate cost data obtained by such accounting methods and
29 systems as shall be approved by the trustees and in furtherance and
30 effectuation of the policy declared in this [sub-paragraph]
31 SUBPARAGRAPH.

32 g. That the rates, services and practices of the purchasing, transmit-
33 ting and/or distributing public agencies or companies in respect to the
34 power generated by such projects shall be governed by the provisions and
35 principles established in the contract, and not by regulations of the
36 public service commission or by general principles of public service law
37 regulating rates, services and practices and that in the event any such
38 public agencies or companies which purchase power from the authority
39 shall sell any such power for resale, such sale for resale shall be made
40 at rates no higher than those at which the power was purchased from the
41 authority.

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

46 i. For the cancellation and termination of any such contract upon
47 violation of the terms thereof by the purchasing, transmitting or
48 distributing public agency or company, or any subsidiary or associate
49 thereof.

50 j. For such security for performance as the authority may deem practi-
51 cable and advisable, including provisions assuring the continuance of
52 service by the purchasing, transmitting and/or distributing public agen-
53 cies or companies and/or the use of their facilities for such service
54 and/or the continuance of an outlet and adequate market for the power
55 generated by such projects.

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

3 THE AUTHORITY, IN CONJUNCTION WITH ANY INVESTOR OWNED UTILITY THAT
4 PURCHASES HYDROELECTRIC POWER FROM THE AUTHORITY'S NIAGARA AND ST.
5 LAWRENCE POWER PROJECTS FOR RURAL AND DOMESTIC USES PURSUANT TO THIS
6 SUBDIVISION, SHALL ESTABLISH AND OFFER AN OPTIONAL PROGRAM TO THOSE
7 DOMESTIC AND RURAL CONSUMERS AS REFERENCED IN THIS SUBDIVISION TO
8 INSTALL, IMPLEMENT OR PROVIDE ENERGY EFFICIENCY MEASURES OR IMPROVEMENTS
9 IN ORDER TO REDUCE THE AMOUNT OF ENERGY CONSUMED BY SUCH DOMESTIC AND
10 RURAL CONSUMERS. AFTER SUCH MEASURES OR IMPROVEMENTS ARE MADE, SUCH
11 HYDROELECTRIC POWER FROM THE AUTHORITY'S NIAGARA AND ST. LAWRENCE POWER
12 PROJECTS SHALL NO LONGER BE MADE AVAILABLE TO THOSE DOMESTIC AND RURAL
13 CONSUMERS THAT HAVE REQUESTED, ACCEPTED AND RECEIVED THE ENERGY EFFI-
14 CIENCY MEASURES OR IMPROVEMENTS AND THOSE AMOUNTS OF HYDROELECTRIC POWER
15 PREVIOUSLY PROVIDED TO SUCH RURAL AND DOMESTIC CONSUMERS SHALL BE MADE
16 AVAILABLE TO RECOVER THE COSTS OF SUCH EFFICIENCY MEASURES OR IMPROVE-
17 MENTS AND TO FINANCE THE POWER SOLUTIONS PROGRAM ESTABLISHED IN ARTICLE
18 SIX OF THE ECONOMIC DEVELOPMENT LAW. SUCH ENERGY EFFICIENCY MEASURES
19 SHALL, TO THE EXTENT PRACTICABLE, BE MADE IN CONJUNCTION WITH OTHER
20 ENERGY EFFICIENCY PROGRAMS OFFERED BY INVESTOR OWNED UTILITIES, STATE
21 AGENCIES AND AUTHORITIES INCLUDING BUT NOT LIMITED TO THE NEW YORK STATE
22 ENERGY AND RESEARCH DEVELOPMENT AUTHORITY AND THE POWER AUTHORITY OF THE
23 STATE OF NEW YORK.

24 S 11. The opening paragraph of subdivision 13 of section 1005 of the
25 public authorities law, as amended by chapter 645 of the laws of 2006,
26 is amended to read as follows:

27 Notwithstanding any other provision of law to the contrary but subject
28 to the terms and conditions of federal energy regulatory commission
29 licenses, to allocate or reallocate directly or by sale for resale, two
30 hundred fifty megawatts of firm Niagara project hydroelectric power as
31 "expansion power" and four hundred forty-five megawatts of firm Niagara
32 project hydroelectric power as "replacement power" to businesses within
33 the state located within thirty miles of the Niagara project, and four
34 hundred ninety megawatts of firm and interruptible power from the Saint
35 Lawrence-FDR project as "preservation power" sold to businesses located
36 within the counties of Jefferson, Saint Lawrence and Franklin, provided
37 that the amount of expansion power allocated to businesses in Chautauqua
38 county on January first, nineteen hundred eighty-seven shall continue to
39 be allocated in such county [and, provided further that up to seventy
40 megawatts of replacement power, up to thirty-eight and six-tenths mega-
41 watts of preservation power from the Saint Lawrence-FDR project which is
42 relinquished or withdrawn after the effective date of chapter three
43 hundred thirteen of the laws of two thousand five which amended this
44 subdivision and, for the period ending on December thirty-first, two
45 thousand six, up to twenty megawatts of other power from the Saint
46 Lawrence-FDR project which is unallocated as of the effective date of
47 chapter three hundred thirteen of the laws of two thousand five which
48 amended this subdivision, shall be allocated by the authority together
49 with such other funds of the authority as the trustees deem feasible and
50 advisable for energy cost savings benefits pursuant to the twelfth
51 undesignated paragraph of this section. Provided, however, that the
52 amount of replacement, preservation power, or the additional twenty
53 megawatts of Saint Lawrence-FDR power for the period ending December
54 thirty-first, two thousand six made available for such purpose, used for
55 energy cost savings benefits that are relinquished by or withdrawn from
56 a recipient thereof shall be offered by the authority proportionately

1 for a period of six months for reallocation to applicants who qualify
2 respectively for replacement or preservation power allocations as
3 provided in this subdivision. If such power is not allocated within such
4 period it shall be allocated for the purpose of energy cost savings
5 benefits pursuant to subdivision (h) of section one hundred eighty-three
6 of the economic development law]. The authority shall negotiate
7 contracts on reasonable terms and conditions to renew or extend every
8 permanent contract allocation of expansion power in effect on the effec-
9 tive date of this subdivision and, to the extent consistent with such
10 contracts, the authority shall negotiate contracts on reasonable terms
11 and conditions to extend or renew all other allocations or allotments of
12 such power in effect on such date. The authority shall negotiate
13 contracts on reasonable terms and conditions to renew or extend for a
14 period of at least five years every permanent contract allocation of
15 replacement power in effect on the effective date of chapter three
16 hundred thirteen of the laws of two thousand five which added this
17 sentence and that would expire by its terms on or before the end of the
18 initial federal energy regulatory commission license for the Niagara
19 project; provided that, in negotiating the terms and conditions of such
20 contracts, the authority may consider a business' compliance with all
21 current contractual obligations, including employment and power usage
22 commitments. Contracts entered into pursuant to this subdivision shall
23 contain reasonable provisions providing for the partial or complete
24 withdrawal of the power in the event the recipient fails to maintain
25 mutually agreed levels of employment, investment, and power utilization.
26 Expansion or replacement power relinquished by businesses or withdrawn
27 by the authority shall be allocated directly or by sale for resale by
28 the authority to businesses within the state located within thirty miles
29 of the Niagara project provided, that the amount of power allocated to
30 businesses in Chautauqua county on January first, nineteen hundred
31 eighty-seven shall be allocated in such county. Preservation power that
32 is relinquished by businesses or withdrawn by the authority shall be
33 allocated directly or by sale for resale by the authority within the
34 counties of Jefferson, Saint Lawrence and Franklin. Allocations made
35 pursuant to this paragraph shall be made in accordance with criteria
36 established by the trustees. Such criteria shall address the expansion
37 of industry and employment pursuant to paragraph (a) of this subdivision
38 and the revitalization of existing industry pursuant to paragraph (b) of
39 this subdivision.

40 S 12. Paragraph (a) of subdivision 16 of section 1005 of the public
41 authorities law, as added by chapter 477 of the laws of 2009, is amended
42 to read as follows:

43 (a) As deemed feasible and advisable by the trustees, to finance and
44 design, develop, construct, implement, provide and administer energy-re-
45 lated projects, programs and services for any public entity and any
46 recipient of the economic development power, expansion power, replace-
47 ment power, preservation power, high load factor power, municipal
48 distribution agency power, [and] the power for jobs AND THE POWER
49 SOLUTIONS programs administered by the authority. In establishing and
50 providing high performance and sustainable building programs and
51 services authorized by this subdivision, the authority is authorized to
52 consult standards, guidelines, rating systems, and/or criteria estab-
53 lished or adopted by other organizations, including but not limited to
54 the United States green building council under its leadership in energy
55 and environmental design (LEED) programs, the green building initi-
56 ative's green globes rating system, and the American National Standards

1 Institute. The source of any financing and/or loans provided by the
2 authority for the purposes of this subdivision may be the proceeds of
3 notes issued pursuant to section one thousand nine-a of this title, the
4 proceeds of bonds issued pursuant to section one thousand ten of this
5 title, or any other available authority funds.

6 S 13. Section 1005 of the public authorities law is amended by adding
7 two new subdivisions 17 and 18 to read as follows:

8 17. TO PROMOTE THE CONSERVATION AND EFFICIENT USE OF ELECTRICITY, THE
9 POWER AUTHORITY OF THE STATE OF NEW YORK SHALL UNDERTAKE OR CAUSE TO
10 UNDERTAKE AN ENERGY AUDIT OF EVERY APPLICANT THAT THE BOARD HAS RECOM-
11 MENDED TO RECEIVE AN AWARD UNDER THE POWER SOLUTIONS PROGRAM AND ENERGY
12 COST SAVINGS BENEFITS PROVIDED FURTHER THAT SUCH AUDITS SHALL BE
13 CONDUCTED PRIOR TO AND AS A CONDITION OF RECEIVING A CONTRACT FOR AN
14 AWARD. SUCH AUDIT SHALL BE CONDUCTED WITHIN TWO YEARS AFTER RECEIVING A
15 CONTRACT FOR AN AWARD. THE AUDITS SHALL ASSESS (I) A RECIPIENT'S ELEC-
16 TRICITY USE TO DETERMINE BASED ON A COMPARISON OF THE NORMS OF THEIR
17 SPECIFIC INDUSTRY, COST-EFFECTIVE MEASURES THAT COULD BE EMPLOYED TO
18 REDUCE ENERGY COSTS, ENERGY USE, OR IMPROVE THE EFFICIENCY OF BUILDINGS,
19 BUILDING SYSTEMS, EQUIPMENT, PROCESSES OR OPERATIONS; AND (II) THE
20 FEASIBILITY OF ONSITE POWER GENERATION FOR COMBINED HEAT AND POWER
21 AND/OR DISTRIBUTED GENERATION PURPOSES. APPLICANTS' ENERGY AUDITS
22 PERFORMED UP TO FIVE YEARS PRIOR TO THE DATE OF APPLICATION SUBMISSION
23 MAY BE CONSIDERED BY THE BOARD IN SATISFACTION OF THE REQUIREMENTS OF
24 THIS SUBDIVISION. COSTS OF THE ENERGY AUDITS SHALL BE PAID BY THE POWER
25 AUTHORITY OF THE STATE OF NEW YORK AS DEEMED FEASIBLE AND ADVISABLE BY
26 THE BOARD. FOR PURPOSES OF IMPLEMENTING THIS SUBDIVISION ONLY, THE POWER
27 AUTHORITY OR ITS AGENT IS AUTHORIZED TO APPLY FOR FUNDING FROM ANY
28 PROGRAM THAT PAYS ALL OR SOME OF THE COSTS OF SUCH AUDITS, AND THE POWER
29 AUTHORITY OR ITS AGENT SHALL BE ENTITLED TO RECEIVE SUCH FUNDING AS IF
30 THE RECIPIENT OF SUCH LOW-COST POWER HAD APPLIED FOR THE FUNDING DIRECT-
31 LY.

32 18. A. FOR THE PURPOSE OF FURNISHING THE STATE WITH SYSTEMATIC INFOR-
33 MATION REGARDING THE STATUS AND THE ACTIVITIES OF THE AUTHORITY, THE
34 AUTHORITY SHALL SUBMIT TO THE GOVERNOR, THE CHAIRPERSON OF THE SENATE
35 FINANCE COMMITTEE, THE CHAIRPERSON OF THE ASSEMBLY WAYS AND MEANS
36 COMMITTEE AND THE STATE COMPTROLLER, WITHIN NINETY DAYS AFTER THE END OF
37 ITS FISCAL YEAR, A COMPLETE AND DETAILED ANNUAL REPORT ON THE ECONOMIC
38 DEVELOPMENT ASSISTANCE IT ADMINISTERS. SUCH ANNUAL REPORT SHALL INCLUDE,
39 BUT NOT BE LIMITED TO, THE FOLLOWING INFORMATION:

40 (I) THE NUMBER OF COMMERCIAL/INDUSTRIAL RECIPIENTS OF ECONOMIC DEVEL-
41 OPMENT ASSISTANCE BENEFITS, THE ECONOMIC DEVELOPMENT REGION, WHERE THE
42 RECIPIENTS ARE LOCATED, WHAT TYPE AND HOW MUCH ASSISTANCE IS PROVIDED,
43 MEGAWATTS OF ELECTRICITY AWARDED, LENGTH OF CURRENT CONTRACT, CURRENT
44 CONTRACT COMPLIANCE STATUS, LAST AUDIT, NUMBER OF JOBS RETAINED AND/OR
45 ADDED IN THE FISCAL YEAR, APPROXIMATE ENERGY EFFICIENCY SAVINGS AND
46 AMOUNT OF POWER REALLOCATED FROM PREVIOUS YEARS DUE TO FORFEITED BENE-
47 FITS;

48 (II) COST TO THE AUTHORITY TO PROVIDE ECONOMIC DEVELOPMENT ASSISTANCE
49 BENEFITS DURING THE PREVIOUS FISCAL YEAR;

50 (III) SOURCES, TYPES AND COSTS OF POWER OBTAINED FOR THE ECONOMIC
51 DEVELOPMENT ASSISTANCE IT ADMINISTERS, INCLUDING, BUT NOT LIMITED TO, AN
52 EXPLANATION OF HOW POWER IS OBTAINED BY THE AUTHORITY TO SUPPORT THE
53 ECONOMIC DEVELOPMENT ASSISTANCE IT ADMINISTERS, THE PERCENTAGE OF LONG-
54 AND SHORT-TERM POWER PURCHASE AGREEMENTS USED AND DAY-AHEAD AND SPOT
55 MARKET PURCHASES, AND A SUMMARY OF NEW YORK INDEPENDENT SYSTEM OPERATOR
56 (NYISO) OR ITS SUCCESSOR CHARGES PAID BY AUTHORITY CUSTOMERS; AND

1 (IV) RECOMMENDATIONS AS TO IMPROVEMENTS TO AND/OR EXPANSION OF THE
2 POWER SOLUTIONS PROGRAM.

3 B. IN ADDITION, THE AUTHORITY SHALL REPORT TO THE PERSONS IN PARAGRAPH
4 A OF THIS SUBDIVISION ON THE STATUS OF ITS ENERGY EFFICIENCY PROGRAM
5 CONDUCTED PURSUANT TO SUBDIVISION FIVE OF SECTION ONE THOUSAND FIVE OF
6 THE PUBLIC AUTHORITIES LAW.

7 S 14. Subdivision 9 of section 186-a of the tax law, as amended by
8 chapter 217 of the laws of 2009, is amended to read as follows:

9 9. Notwithstanding any other provision of this chapter or any other
10 law to the contrary, for taxable periods nineteen hundred ninety-seven
11 [through] and [including two thousand ten] THEREAFTER, any utility which
12 delivers power under the power for jobs program OR THE POWER SOLUTIONS
13 PROGRAM, as established by section one hundred eighty-nine OR ONE
14 HUNDRED EIGHTY-EIGHT-A of the economic development law, shall be allowed
15 a credit, subject to the limitations thereon contained in this subdivi-
16 sion, against the tax imposed under this section equal to net lost
17 revenues from the delivery of power under such power for jobs program OR
18 POWER SOLUTIONS PROGRAM. Net lost revenues means the "net receipts"
19 less "net utility revenue" from such delivery of power. For purposes of
20 this subdivision, "net receipts" shall mean the amount that the utility
21 would have otherwise received from customers receiving power pursuant to
22 allocations by the New York state economic development power allocation
23 board in accordance with section one hundred eighty-nine OR ONE HUNDRED
24 EIGHTY-EIGHT-A of the economic development law, or from customers whose
25 allocation has been transferred to an energy service company, or from
26 energy service companies to which such allocation has been transferred,
27 pursuant to its tariff supervised by the public service commission for
28 substantially comparable service otherwise applicable to such customers
29 or energy service companies in the absence of such designation, less the
30 utility's annual average incremental short-term variable and capacity
31 costs of providing such power in the absence of such purchase. For the
32 purposes of this subdivision, "net utility revenue" shall mean the
33 revenues the utility actually receives in accordance with such section
34 one hundred eighty-nine OR ONE HUNDRED EIGHTY-EIGHT-A from such custom-
35 ers so designated by the New York state economic development power allo-
36 cation board or from customers whose allocation has been transferred to
37 an energy service company, or from the energy service companies to which
38 a power for jobs OR POWER SOLUTIONS allocation has been transferred,
39 less the utility's cost of such power under such program. Provided,
40 however, that any credit under this section shall be used only with
41 respect to the same taxable year during which such credit arose and
42 shall not be capable of being carried forward or backward to any other
43 taxable period. Nor shall any credit be allowed to any utility for the
44 total amount of power, expressed in kilowatt hours, purchased by the
45 customers of such utility under such program during the taxable period
46 that exceeds the prorated "baseline energy use" by all customers of that
47 utility purchasing power under such program during the taxable period.
48 "Baseline energy use" with respect to each customer shall mean the larg-
49 est amount of kilowatt hours of energy used by such customer during any
50 twelve consecutive month period occurring during the preceding thirty
51 months immediately preceding the New York state economic development
52 power allocation board's recommendation of such customer's application,
53 prorated to reflect the length of time of the customer's participation
54 in such program during the taxable period. Provided further, however,
55 that in accordance with subdivision (k) of section one hundred eighty-
56 nine OR SUBPARAGRAPH (III) OF PARAGRAPH (D) OF SUBDIVISION THREE OF

1 SECTION ONE HUNDRED EIGHTY-EIGHT-A of the economic development law no
2 tax credit shall be available for any revenue losses when a utility has
3 declined to purchase power allocated for sale under such program. No
4 electric corporation shall be allowed the tax credit authorized by this
5 subdivision until it shall file a certificate from the department of
6 public service for the period covered by the return verifying that the
7 calculation of such tax credit complies with this subdivision and the
8 department of public service has approved such certificate and forwarded
9 a copy of such approved certificate to the commissioner or any amended
10 certificate resulting from the need for correction. The credit allowed
11 by this subdivision shall not be applicable in calculating any other tax
12 imposed or authorized to be imposed by this chapter or any other law,
13 and the amount of the tax surcharge imposed under section one hundred
14 eighty-six-c of this article shall be calculated and payable as if the
15 credit provided for by this subdivision were not allowed.

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

25 S 16. Notwithstanding the provisions of article 5 of the general
26 construction law, the provisions of chapter 316 of the laws of 1997, and
27 section 7 of chapter 645 of the laws of 2006, are hereby revived and
28 shall continue in full force and effect as such provisions existed on
29 May 15, 2010.

30 S 17. This act shall take effect immediately and shall be deemed to
31 have been in full force and effect on and after May 15, 2010; provided
32 that the amendments to section 189 of the economic development law made
33 by sections two and three of this act shall not affect the repeal of
34 such section and shall be deemed repealed therewith; and provided
35 further, that the amendments to the ninth undesignated paragraph and
36 paragraph (a) of subdivision sixteen of section 1005 of the public
37 authorities law made by sections eight and twelve of this act, respec-
38 tively, shall not affect the expiration of such provisions and shall
39 expire therewith.