S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

June 4, 2009

Introduced by M. of A. GABRYSZAK, SCHROEDER, SCHIMMINGER, JAFFEE, DelMONTE, PEOPLES, QUINN, HAYES, GIGLIO -- read once and referred to the Committee on Energy -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public authorities law and the economic development law, in relation to authorizing unallocated expansion or replacement power to be allocated for western New York economic development fund benefits

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

Section 1. The opening paragraph of subdivision 13 of section 1005 of the public authorities law, as amended by chapter 645 of the laws of 2006, is amended to read as follows:

Notwithstanding any other provision of law to the contrary but subject to the terms and conditions of federal energy regulatory commission licenses, to allocate or reallocate directly or by sale for resale, two hundred fifty megawatts of firm Niagara project hydroelectric power as "expansion power" and four hundred forty-five megawatts of firm Niagara project hydroelectric power as "replacement power" to businesses within the state located within thirty miles of the Niagara project, and four hundred ninety megawatts of firm and interruptible power from the Saint Lawrence-FDR project as "preservation power" sold to businesses located within the counties of Jefferson, Saint Lawrence and Franklin, provided that the amount of expansion power allocated to businesses in Chautauqua county on January first, nineteen hundred eighty-seven shall continue to be allocated in such county and, provided further that up to seventy megawatts of replacement power, up to thirty-eight and six-tenths megawatts of preservation power from the Saint Lawrence-FDR project which is relinquished or withdrawn after the effective date of chapter three hundred thirteen of the laws of two thousand five which amended this subdivision and, for the period ending on December thirty-first, two

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

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thousand six, up to twenty megawatts of other power from the Saint Lawrence-FDR project which is unallocated as of the effective date of chapter three hundred thirteen of the laws of two thousand five which amended this subdivision, shall be allocated by the authority together with such other funds of the authority as the trustees deem feasible and advisable for energy cost savings benefits AND FOR WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND BENEFITS pursuant to the [twelfth] ELEVENTH undesignated paragraph of this section. Provided, however, that the amount of replacement, preservation power, or the additional twenty megawatts of Saint Lawrence-FDR power for the period ending December thirty-first, two thousand six made available for such purpose, used for energy cost savings benefits that are relinquished by or withdrawn from a recipient thereof shall be offered by the authority proportionately for a period of six months for reallocation to applicants who qualify respectively for replacement or preservation power allocations as provided in this subdivision. If such power is not allocated within such period it shall be allocated for the purpose of energy cost savings benefits pursuant to subdivision (h) of section one hundred eighty-three of the economic development law. The authority shall negotiate contracts on reasonable terms and conditions to renew or extend every permanent contract allocation of expansion power in effect on the effective date of this subdivision and, to the extent consistent with such contracts, the authority shall negotiate contracts on reasonable terms and conditions to extend or renew all other allocations or allotments of such power in effect on such date. The authority shall negotiate contracts on reasonable terms and conditions to renew or extend for a period of at least five years every permanent contract allocation of replacement power in effect on the effective date of chapter three hundred thirteen of the laws of two thousand five which added this sentence and that would expire by its terms on or before the end of the initial federal energy regulatory commission license for the Niagara project; provided that, in negotiating the terms and conditions of such contracts, the authority may consider a business' compliance with all current contractual obligations, including employment and power usage commitments. Contracts entered into pursuant to this subdivision shall contain reasonable provisions providing for the partial or complete withdrawal of the power in the event the recipient fails to maintain mutually agreed levels of employment, investment, and power utilization. Expansion or replacement power relinquished by businesses or withdrawn by the authority shall be allocated directly or by sale for resale by the authority to businesses within the state located within thirty miles of the Niagara project provided, that the PROCEEDS FROM THE SALE OF SUCH UNALLOCATED AND ALLOCATED, BUT RELINQUISHED OR WITHDRAWN OR CURRENTLY NOT ACCESSED EXPANSION OR REPLACEMENT POWER, AS SHALL BE DETERMINED BY THE TRUSTEES, SHALL BE ALLOCATED FOR THE PURPOSES OF WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND BENEFITS PURSUANT TO THE ELEVENTH UNDESIGNATED PARAGRAPH OF THIS SECTION. PROCEEDS TO SUCH WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND SHALL NOT PRECLUDE THE AUTHORITY FROM ALLOCATING EXPANSION OR REPLACEMENT POWER TO ELIGIBLE COMPANIES UNDER THE PROVISIONS OF THIS SECTION. THE amount of power allocated to businesses in Chautauqua county on January first, nineteen hundred eighty-seven shall be allocated in such county. Preservation power that is relinquished by businesses or withdrawn by the authority shall be allocated directly or by sale for resale by the authority within the counties of Jefferson, Saint Lawrence and Franklin. Allocations made pursuant to this paragraph shall be made in accordance with criteria established by the trustees. Such

criteria shall address the expansion of industry and employment pursuant to paragraph (a) of this subdivision and the revitalization of existing industry pursuant to paragraph (b) of this subdivision.

S 2. The eleventh undesignated paragraph of section 1005 of the public authorities law, as amended by section 7 of part U of chapter 59 of the laws of 2006, is amended to read as follows:

The authority is authorized to allocate up to seventy megawatts of unallocated power from the Niagara project sold prior to the effective date of this paragraph as replacement power, up to thirty-eight and six-tenths megawatts of preservation power from the Saint Lawrence-FDR project which is relinquished or withdrawn after the effective date of this paragraph, and for the period ending on December thirty-first, two thousand six, up to an additional twenty megawatts of power from the Saint Lawrence-FDR project which is unallocated as of the effective date of this paragraph, for sale into the wholesale market, the net earnings from which and such other funds of the authority as deemed feasible and advisable by the trustees, shall be used for energy cost savings benefits. Such energy cost savings benefits shall be made upon recommendation of the economic development power allocation board, pursuant to subdivision (h) of section one hundred eighty-three of the economic development law. THE AUTHORITY IS AUTHORIZED TO ALLOCATE UNALLOCATED EXPANSION AND REPLACEMENT POWER FROM THE NIAGARA PROJECT, AND RELINQUISHED OR WITHDRAWN EXPANSION AND REPLACEMENT POWER, FOR SALE INTO THE WHOLESALE MARKET, THE NET EARNINGS FROM WHICH AND SUCH OTHER FUNDS OF THE AUTHORITY AS DEEMED FEASIBLE AND ADVISABLE BY THE TRUSTEES, SHALL BE USED FOR WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND BENEFITS. SUCH WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND BENEFITS SHALL BE MADE UPON RECOMMENDATION OF THE WESTERN NEW YORK ADVISORY GROUP, AS ESTABLISHED UNDER "MEMORANDUM OF UNDERSTANDING REGARDING WESTERN NEW YORK HYDROPOWER" AGREED TO BY THE AUTHORITY ON OCTOBER TWENTY-SECOND, TWO THOUSAND THREE, PURSUANT TO SUBDIVISION (I) OF SECTION ONE HUNDRED EIGHTY-THREE OF THE ECONOMIC DEVELOPMENT LAW. For purposes of this paragraph, the term net earnings shall mean any excess of revenues earned from the sale of such power allocated to the wholesale market from the Niagara and Saint Lawrence-FDR projects over the revenues that would have been received had such firm power been allocated and sold on a firm basis by the authority prior to the effective date of this paragraph.

S 3. Section 183 of the economic development law is amended by adding a new subdivision (i) to read as follows:

(I) 1. THE WESTERN NEW YORK ADVISORY GROUP SHALL SOLICIT APPLICATIONS FOR AND MAKE RECOMMENDATIONS FOR APPROVAL OF WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND BENEFITS IN AMOUNTS MADE AVAILABLE PURSUANT TO THE ELEVENTH UNDESIGNATED PARAGRAPH OF SECTION ONE THOUSAND FIVE OF THE PUBLIC AUTHORITIES LAW.

2. ELIGIBLE PROJECTS SHALL INCLUDE PROJECTS PROPOSED BY ENTITIES FROM THE PUBLIC, PRIVATE OR NOT-FOR-PROFIT SECTORS LOCATED WITHIN A THIRTY-MILE RADIUS OF THE NIAGARA POWER PLANT PROJECT THAT DEVELOP OR MANAGE ECONOMIC DEVELOPMENT PROJECTS THAT HAVE IDENTIFIED THE ULTIMATE SITE OR USER OF SUCH ECONOMIC DEVELOPMENT FUND BENEFITS. ELIGIBLE PROJECTS SHALL BE PROPOSED BY ENTITIES THAT ARE CUSTOMERS SERVED UNDER THE POWER AUTHORITY OF THE STATE OF NEW YORK'S HIGH LOAD FACTOR, ECONOMIC DEVELOPMENT POWER AND OTHER BUSINESS CUSTOMERS SERVED BY POLITICAL SUBDIVISIONS OF THE STATE AUTHORIZED BY LAW TO ENGAGE IN THE DISTRIBUTION OF ELECTRIC POWER THAT WERE AUTHORIZED TO BE SERVED BY THE AUTHORITY'S FORMER JAMES A. FITZPATRICK NUCLEAR POWER PLANT.

3. EACH APPLICATION FOR A WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND BENEFIT SHALL BE EVALUATED UNDER CRITERIA ADOPTED BY THE WESTERN NEW YORK ADVISORY GROUP, IN CONSULTATION WITH THE POWER AUTHORITY OF THE STATE OF NEW YORK, WHICH CRITERIA SHALL BE DESIGNED TO PROMOTE ECONOMIC DEVELOPMENT, MAINTAIN AND DEVELOP JOBS, AND ENCOURAGE NEW CAPITAL INVESTMENT THROUGHOUT THE STATE OF NEW YORK. SUCH CRITERIA SHALL ADDRESS BUT NEED NOT BE LIMITED TO:

(A) THE OVERALL ECONOMIC IMPACT OF THE APPLICANT IN TERMS OF THE NUMBER OF JOBS TO BE CREATED OR RETAINED, AVERAGE ANNUAL PAYROLL, CAPITAL INVESTMENT AND USE OF NEW YORK STATE SUPPLIERS;

(B) THE LIKELIHOOD THAT IN THE ABSENCE OF APPROVAL OF A WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND BENEFIT, THE APPLICANT WOULD CLOSE, CONTRACT OR RELOCATE OUTSIDE THE STATE OF NEW YORK;

(C) THE APPLICANT'S COMPLIANCE WITH THE COMMITMENT TO RETAIN AND/OR CREATE JOBS CONTAINED IN ITS PRIOR POWER CONTRACT WITH THE POWER AUTHORITY OF THE STATE OF NEW YORK;

(D) THE EXTENT TO WHICH A WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND BENEFIT WILL AFFECT THE OVERALL PRODUCTIVITY OR COMPETITIVENESS OF THE APPLICANT'S BUSINESS AND ITS EXISTING EMPLOYMENT WITHIN THE STATE; AND

(E) THE OVERALL IMPACT OF THE PROJECT IN TERMS OF THE ECONOMIC VIABILITY OF IDENTIFIED ULTIMATE SITE OR USER INCLUDING THE PROJECT'S ABILITY TO INDUCE ADDITIONAL COMMERCIAL ACTIVITY ON THE SITE, REVITALIZE AN URBAN AREA, AND ITS COMPLIANCE WITH REGIONAL DEVELOPMENT PLANS.

4. APPLICATIONS FOR A WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND BENEFIT SHALL BE IN THE FORM AND CONTAIN SUCH INFORMATION, EXHIBITS AND SUPPORTING DATA AS THE BOARD MAY PRESCRIBE. THE WESTERN NEW YORK ADVISORY GROUP SHALL REVIEW THE APPLICATIONS RECEIVED AND SHALL DETERMINE THE APPLICATIONS WHICH BEST MEET THE CRITERIA ESTABLISHED FOR THE BENEFITS PURSUANT TO THIS SUBDIVISION AND IT SHALL RECOMMEND SUCH APPLICATIONS TO THE POWER AUTHORITY AND THE STATE OF NEW YORK WITH SUCH TERMS AND CONDITIONS AS IT DEEMS APPROPRIATE. SUCH TERMS AND CONDITIONS SHALL INCLUDE REASONABLE PROVISIONS PROVIDING FOR THE PARTIAL OR COMPLETE WITHDRAWAL OF THE WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND BENEFIT IN THE EVENT THAT THE RECIPIENT FAILS TO MAINTAIN MUTUALLY AGREED UPON COMMITMENTS THAT MAY INCLUDE, BUT ARE NOT LIMITED TO, INFRASTRUCTURE PROJECT COMPLETION. RECOMMENDATION FOR APPROVAL OF A WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND BENEFIT SHALL QUALIFY AN APPLICANT TO RECEIVE A WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND BENEFIT FROM THE POWER AUTHORITY OF THE STATE OF NEW YORK PURSUANT TO THE TERMS AND CONDITIONS OF THE RECOMMENDATION.

5. THE TRANSFER OF A WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND BENEFIT SHALL BE PROHIBITED UNLESS SPECIFICALLY APPROVED BY THE WESTERN NEW YORK ADVISORY GROUP AS CONSISTENT WITH THE CRITERIA ESTABLISHED PURSUANT TO THIS PARAGRAPH. ANY TRANSFER WHICH OCCURS WITHOUT SUCH ADVISORY GROUP'S APPROVAL SHALL BE INVALID AND SUCH TRANSFER MAY SUBJECT THE RECIPIENT TO REVOCATION OF ITS BENEFIT AND MODIFICATION OR REVOCATION OF ITS CONTRACT.

S 4. This act shall take effect immediately, provided that the amendments to section 183 of the economic development law made by section three of this act shall not affect the expiration of such section and shall be deemed to expire therewith.