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

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:

Section 1. Section 182 of the economic development law, as amended by chapter 289 of the laws of 2000, is amended to read as follows:

S 182. The New York state economic development power allocation board. There is hereby created a New York state economic development power allocation board, which shall possess the powers and duties herein specified and all the powers necessary or proper to carry out the purposes of this article. The board shall consist of four members, [two] ONE OF WHOM SHALL BE THE PRESIDENT OF THE URBAN DEVELOPMENT CORPORATION AND ONE of whom shall be appointed by the governor and one of whom shall be appointed by the speaker of the assembly and one of whom shall be appointed by the president pro tempore of the senate. Each member shall be appointed for terms of three years or until a successor shall have been named and qualified. The chairman shall be [designated by the governor from amongst the members] THE PRESIDENT OF THE URBAN DEVELOPMENT CORPORATION. Three members shall constitute a quorum for the purposes of organizing the board and conducting the business thereof; and no actions of the board may be taken except upon the affirmative 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.

LBD15296-07-0

attendance and participation by members of the board. If videoconferencing is used the board shall provide an opportunity for the public to attend, listen and observe at any site at which a member participates. The public notice for the meeting shall inform the public that [vidioconferencing] VIDEOCONFERENCING will be used, identify the locations for the meeting, and state that the public has the right to attend the meeting at any of the locations. Members of the board, except those who are employees or officers of the state, its authorities or agencies shall not receive a salary or other compensation, but shall be allowed the necessary and actual expenses incurred in the performance of duties under this article.

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

2. During the period commencing on November first, two thousand five and ending on [May fifteenth] DECEMBER THIRTY-FIRST, two thousand ten eligible businesses shall only include 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 from the authority's former James A. Fitzpatrick nuclear power plant as of the effective date of this subdivision whose power prices may be subject to increase before [May fifteenth] DECEMBER THIRTY-FIRST, two thousand ten. Provided, however, that the total amount of megawatts of replacement and preservation power which, due to the extension of the energy cost savings benefits, are not relinquished by or withdrawn from a recipient shall be deemed to be relinquished or withdrawn for purposes of offering such megawatts by the authority for reallocation pursuant to subdivision thirteen of section one thousand five of the public authorities law. Provided, further, that for any such reallocation, the authority shall maintain the same energy cost savings benefit level for all eligible businesses using any available authority resources as deemed feasible and advisable by the trustees pursuant to section seven of part U of chapter fifty-nine of the laws of two thousand six.

4. Applications for an energy cost savings benefit shall be in the form and contain such information, exhibits and supporting data as the board may prescribe. The board 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 of the state of New York with such terms and conditions as it deems appropriate; provided, however, that for energy cost savings benefits granted on or after June thirtieth, two thousand nine through [May fifteenth] DECEMBER THIRTY-FIRST, two thousand ten, the board shall expedite the awarding of such benefits and shall defer the review of compliance with such criteria until after the applicant has been awarded an energy cost savings benefit. Such terms and conditions shall include reasonable provisions providing for the partial or complete withdrawal of the energy cost savings benefit in the event the recipient fails to maintain mutually agreed upon commitments that may include, but are not limited to, levels of employment, capital investment and power utilization. Recommendation for approval of an energy cost savings benefit shall qualify an applicant to receive an energy cost savings benefit from the power authority of the state of New York pursuant to the terms and conditions of the recommendation.

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

"Power for jobs electricity savings reimbursements" shall mean payments made by the power authority of the state of New York as recommended by the board to recipients of allocations of power under phases four and five of the power for jobs program for a period of time until November thirtieth, two thousand four, subsequent to the expiration of their phase four or five power for jobs contract provided however that any power for jobs recipient may choose to receive an electricity savings reimbursement as a substitute for a contract extension for the period from the date the recipient's contract expires through [May fifteenth] DECEMBER THIRTY-FIRST, two thousand ten. The "basic reimbursement" is an amount that when credited against the recipient's actual "unit cost of electricity" during a quarter (meaning the cost for commodity and delivery per kilowatt-hour for the quantity of electricity purchased and delivered under the power for jobs program during a similar period in the final year of the recipient's contract), results in an effective unit cost of electricity during the quarter equal to the average unit cost of electricity such recipient paid during the final year of the contract for power allocated under phase four or five of the power for jobs program.

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

(f) Eligibility. The board shall recommend applications for allocations of power under the power for jobs program to or for the use of businesses which normally utilize a minimum peak electric demand in excess of four hundred kilowatts; provided, however, that up to one hundred megawatts of power available for allocation during the initial three phases of the power for jobs program may be recommended for allocations to not-for-profit corporations and to small businesses; and, provided, further that up to seventy-five megawatts of power available for allocation during the fourth phase of the program may be recommended for allocations to not-for-profit corporations and to small businesses. The board may require small businesses that normally utilize a minimum peak electric demand of less than one hundred kilowatts to aggregate their electric demand in amounts of no less than one hundred kilowatts, for the purposes of applying to the board for an allocation of power. The board shall recommend allocations of the additional three hundred megawatts available during the fourth phase of the program to any such eligible applicant, including any recipient of power allocated during the first phase of the program. The board shall recommend allocations of the additional one hundred eighty-three megawatts available during the fifth phase of the program to any eligible applicant, including any recipient of power allocated during the second and third phases of the program; provided, however, that the term of contracts for allocations under the fifth phase of the program shall in no case extend beyond [May fifteenth] DECEMBER THIRTY-FIRST, two thousand ten. Notwithstanding any provision of law to the contrary, and, in particular, the provisions of this chapter concerning the terms of contracts for allocations under the power for jobs program, the terms of any contract with a recipient of power allocated under phase two of the power for jobs program that has expired or will expire on or before the thirty-first day of August, two thousand two, may be extended by the power authority of the state of New York for an additional period of three months effective on the date of such expiration, pending the filing and approval of an application by such recipient for an allocation under the fifth phase of the program. The term of any new contract with such recipient under the fifth phase of the program shall be deemed to include any three month contract extension made pursuant to this subdivision and the termination date of any such new contract under phase five shall be no later than if such new contract had commenced upon the expiration of the recipient's original phase two contract. The terms of any contract with a recipient of power allocated under phase four and/or phase five of the power for jobs program that has expired or will expire on or before the thirty-first day of December, two thousand five, may be extended by the power authority of the state of New York from a date beginning no earlier than the first day of December, two thousand four and extending through [May fifteenth] DECEMBER THIRTY-FIRST, two thousand ten.

(l) The board shall solicit and review applications for the power for jobs electricity savings reimbursements and contract extensions from recipients of power for jobs allocations under phases four and five of the program for the award of such reimbursements and/or contract extensions. The board may prescribe a simplified form and content for an application for such reimbursements or extensions. An applicant shall be eligible for such reimbursements and/or extensions only if it is in compliance with and agrees to continue to meet the job retention and creation commitments set forth in its prior power for jobs contract, or such other commitments as the board deems reasonable; provided, however, that for the power for jobs electricity savings reimbursements and contract extensions granted on or after June thirtieth, two thousand nine through [May fifteenth] DECEMBER THIRTY-FIRST, two thousand ten, the board shall expedite the awarding of such reimbursements and/or extensions and shall defer the review of compliance with such commitments until after the applicant has been awarded a power for jobs electricity savings reimbursement and/or contract extension. The board shall review such applications and make recommendations for the award: 1. of such reimbursements through the power authority of the state of New York for a period of time up to November thirtieth, two thousand four, and 2. of such contract extensions or reimbursements as applied for by the recipient for a period of time beginning December first, two thousand four and ending [May fifteenth] DECEMBER THIRTY-FIRST, two thousand ten. At no time shall a recipient receive both a reimbursement and extension after December first, two thousand four. The power authority of the state of New York shall receive notification from the board regarding the award of power for jobs electricity savings reimbursements and/or contract extensions.

S 5. Section 9 of 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, as amended by chapter 217 of the laws of 2009, is amended to read as follows:

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

S 6. Section 11 of 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, as amended by chapter 217 of the laws of 2009, is amended to read as follows:

S 11. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2006; provided, however, that the amendments to section 183 of the economic development law and subparagraph 2 of paragraph g of the ninth undesignated paragraph of section 1005 of the public authorities law made by sections two and six of this act shall not affect the expiration of such section and subparagraph, respectively, and shall be deemed to expire therewith; provided further, however, that the amendments to section 189 of the economic development law and subdivision 9 of section 186-a of the tax law made by sections three, four, five and ten of this act shall not affect the repeal of such section and subdivision, respectively, and shall be deemed to be repealed therewith; provided further, however, that section seven of this act shall expire and be deemed repealed [May 15] DECEMBER 31, 2010.

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

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

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

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

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

(g) [The] EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE board shall solicit applications for economic development power and for power under the power for jobs program by public notice. Such notice shall be in the form of newspaper advertisements, press releases, and by such other means as the board finds appropriate. Solicitations of preliminary applications for power under the power for jobs program shall begin promptly after the effective date of chapter three hundred sixteen of the laws of nineteen hundred ninety-seven establishing such program. The board shall solicit applications for the additional three hundred megawatts of power available during the fourth phase of the program by public notice, written notification to each recipient of power allocated during the first phase of the program, and such other means as the board finds appropriate. Solicitations of applications for such three hundred megawatts of power available in phase four of the program shall begin promptly after the effective date of part KK of chapter sixty-three of the laws of two thousand making such power available. The board shall solicit applications for the additional one hundred eighty-three megawatts of power available during the fifth phase of the program by public notice, written notification to each recipient of power allocated during the second and third phases of the program, and by such other means as the board finds appropriate. Solicitations for such one hundred eighty-three megawatts of power available in phase five of the program shall begin promptly after the effective date of the chapter of the laws of two thousand two making such power available.

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

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

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

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

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

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

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

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

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

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

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

(A) "APPLICABLE CRITERIA" SHALL MEAN THE CRITERIA SPECIFIED IN SUBDIVISION THREE OF THIS SECTION.

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

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

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

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

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

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

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

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

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

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

(C) SUBJECT TO CONFIDENTIALITY REQUIREMENTS, UPON RECEIPT OF EACH APPLICATION BY THE AUTHORITY, THE AUTHORITY SHALL PROMPTLY NOTIFY BY ELECTRONIC MEANS, INCLUDING WEB SITE POSTINGS AND SUCH OTHER METHODS THE BOARD DEEMS APPROPRIATE IN CONSULTATION WITH THE AUTHORITY, THE GOVERNOR, THE SPEAKER OF THE ASSEMBLY, THE MINORITY LEADER OF THE ASSEMBLY, THE TEMPORARY PRESIDENT OF THE SENATE, THE MINORITY LEADER OF THE SENATE, AND EACH MEMBER OF THE STATE LEGISLATURE IN WHOSE DISTRICT ANY PORTION OF THE FACILITY OWNED OR OPERATED BY THE APPLICANT IS LOCATED. SUCH NOTICE SHALL PROVIDE THE NAME AND A DESCRIPTION OF THE APPLICANT, AND THE ADDRESS OF THE APPLICANT'S FACILITIES THAT WOULD RECEIVE AN AWARD UNDER THE PROGRAM. THE AUTHORITY SHALL ALSO DEVELOP A LISTING WHICH CONTAINS THE NAME AND A DESCRIPTION OF EACH APPLICANT, THE AWARD SOUGHT BY EACH APPLICANT, AND THE ADDRESS OF THE FACILITIES FOR WHICH THE APPLICANT SEEKS THE AWARD, AND MAKE THE LISTING AVAILABLE FOR PUBLIC REVIEW ON THE AUTHORITY'S WEBSITE.

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

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

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

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

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

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

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

(VII) THE EXTENT TO WHICH THE APPLICANT HAS INVESTED IN ENERGY EFFICIENCY MEASURES AND/OR ONSITE POWER GENERATION FOR COMBINED HEAT AND POWER AND/OR DISTRIBUTED GENERATION PURPOSES OR WILL AGREE, IF RECOMMENDED BY THE BOARD FOR AN AWARD, TO COMMIT TO MAKING COST EFFECTIVE TANGIBLE INVESTMENTS IN ENERGY EFFICIENCY MEASURES AND/OR ONSITE POWER GENERATION FOR COMBINED HEAT AND POWER AND/OR DISTRIBUTED GENERATION PURPOSES AS IDENTIFIED PURSUANT TO SUBDIVISION SEVENTEEN OF SECTION ONE THOUSAND FIVE OF THE PUBLIC AUTHORITIES LAW AS A CONDITION TO RECEIVING A POWER SOLUTIONS AWARD;

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

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

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

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

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

(XIII) IMPACT OF CURRENT ECONOMIC CONDITIONS ON THE APPLICANT.

(B) A RECOMMENDATION BY THE BOARD THAT THE AUTHORITY PROVIDE A POWER SOLUTIONS PROGRAM AWARD TO AN ELIGIBLE APPLICANT SHALL INCLUDE: (1) A DESCRIPTION OF THE AWARD THAT THE BOARD HAS DETERMINED SHOULD BE AWARDED TO SUCH APPLICANT, PROVIDED HOWEVER, THAT THE BOARD MAY RECOMMEND AN AWARD THAT DIFFERS FROM THE AWARD REQUESTED BY AN ELIGIBLE APPLICANT; (2) AN EFFECTIVE TERM OF CONTRACT BETWEEN THE ELIGIBLE APPLICANT AND THE AUTHORITY WHICH SHALL NOT EXCEED SEVEN YEARS, PROVIDED HOWEVER THAT THE TERM OF ANY SUCH CONTRACT SHALL NOT BECOME EFFECTIVE BEFORE JANUARY FIRST, TWO THOUSAND ELEVEN; (3) THE DATE OF THE MANDATORY MIDCONTRACT COMPLIANCE REVIEW AT WHICH TIME THE ELIGIBLE APPLICANT, IF FOUND IN

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

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

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

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

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

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

(H) (1) THE BOARD SHALL SUBMIT TO THE DIRECTOR OF THE BUDGET, THE CHAIRPERSON OF THE SENATE FINANCE COMMITTEE AND THE CHAIRPERSON OF THE ASSEMBLY WAYS AND MEANS COMMITTEE AN EVALUATION OF THE SUCCESS OF EACH ECONOMIC DEVELOPMENT POWER PROGRAM IT ADMINISTERS PREPARED BY AN INDEPENDENT THIRD PARTY. SUCH EVALUATION SHALL DETERMINE WHETHER THE SERVICES PROVIDED HAVE HELPED RECIPIENTS TO SUCCEED, BASED ON A COMPARISON OF THE PERFORMANCE OF THE RECIPIENTS AGAINST THE NORMS OF THEIR SPECIFIC INDUSTRY, AND SHALL ASSESS THE EFFECTIVENESS, IF ANY, OF EACH ECONOMIC DEVELOPMENT POWER PROGRAM. SUCH AN EVALUATION SHALL BE SUBMITTED BY DECEMBER THIRTY-FIRST, TWO THOUSAND FOURTEEN AND BY DECEMBER THIRTY-FIRST EVERY FIVE YEARS THEREAFTER.

(2) BETWEEN EVALUATION DUE DATES, THE BOARD SHALL MAINTAIN THE NECESSARY RECORDS AND DATA REQUIRED TO SATISFY SUCH EVALUATION REQUIREMENTS AND TO SATISFY INFORMATION REQUESTS RECEIVED FROM THE DIRECTOR OF THE BUDGET, THE CHAIRPERSON OF THE SENATE FINANCE COMMITTEE AND THE CHAIRPERSON OF THE ASSEMBLY WAYS AND MEANS COMMITTEE BETWEEN SUCH EVALUATION DUE DATES.

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

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

public of the state, the authority shall in addition to other methods which it may find advantageous make provision so that municipalities and other political [sub-divisions] SUBDIVISIONS of the state now or hereafter authorized by law to engage in the distribution of electric power may secure a reasonable share of the power generated by such projects, and shall sell the same or cause the same to be sold to such municipalities and political subdivisions at prices representing cost of generation, plus capital and operating charges, plus a fair cost of transmission, all as determined by the trustees, and subject to conditions which shall assure the resale of such power to domestic and rural consumers at the lowest possible price, provided, however, that in disposing of hydro-electric power pursuant to and in furtherance of the aforementioned policy and purposes, appropriate provision may also be made to allocate a reasonable share of project power to agencies created or designated by other states and authorized to resell the power to users under the same terms and conditions as power is disposed of in New York state. To that end, the authority may provide in any contract or contracts which it may make for the sale, transmission and distribution of the power that the purchaser, transmitter or distributor shall construct, maintain and operate, on such terms as the authority may deem proper, such connecting lines as may be necessary for transmission of the power from main transmission lines to such municipalities or political subdivisions.

Contracts for the sale, transmission and distribution of power generated by such projects shall provide for the effectuation of the foregoing policy and shall provide:

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

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

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

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

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

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

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

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

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

j. For such security for performance as the authority may deem practicable and advisable, including provisions assuring the continuance of service by the purchasing, transmitting and/or distributing public agencies or companies and/or the use of their facilities for such service and/or the continuance of an outlet and adequate market for the power generated by such projects.

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

THE AUTHORITY, IN CONJUNCTION WITH ANY INVESTOR OWNED UTILITY THAT PURCHASES HYDROELECTRIC POWER FROM THE AUTHORITY'S NIAGARA AND ST. LAWRENCE POWER PROJECTS FOR RURAL AND DOMESTIC USES PURSUANT TO THIS SUBDIVISION, SHALL INSTALL, IMPLEMENT OR PROVIDE ENERGY EFFICIENCY MEASURES OR IMPROVEMENTS TO THOSE DOMESTIC AND RURAL CONSUMERS AS REFERENCED IN THIS SUBDIVISION IN ORDER TO REDUCE THE AMOUNT OF KILOWATTS CONSUMED BY SUCH DOMESTIC AND RURAL CONSUMERS IN AN AMOUNT EQUAL TO OR GREATER THAN THE AMOUNT OF SUCH HYDROELECTRIC POWER SOLD TO SUCH DOMESTIC AND RURAL CONSUMERS. AFTER SUCH IMPROVEMENTS ARE MADE, SUCH HYDROELECTRIC POWER FROM THE AUTHORITY'S NIAGARA AND ST. LAWRENCE POWER PROJECTS SHALL NO LONGER BE MADE AVAILABLE TO DOMESTIC AND RURAL CONSUMERS THAT HAVE RECEIVED THE ENERGY EFFICIENCY MEASURES OR IMPROVEMENTS AND THOSE AMOUNTS OF HYDROELECTRIC POWER NO LONGER CONSUMED DUE TO THE IMPLEMENTATION OF ENERGY EFFICIENCY MEASURES OR IMPROVEMENTS MADE PURSUANT TO THIS SUBDIVISION SHALL BE MADE AVAILABLE TO THE POWER SOLUTIONS PROGRAM ESTABLISHED IN ARTICLE SIX OF THE ECONOMIC DEVELOPMENT LAW. SUCH ENERGY EFFICIENCY MEASURES SHALL, TO THE EXTENT PRACTICABLE, BE MADE IN CONJUNCTION WITH OTHER ENERGY EFFICIENCY PROGRAMS OFFERED BY INVESTOR OWNED UTILITIES, STATE AGENCIES AND AUTHORITIES INCLUDING BUT NOT LIMITED TO THE NEW YORK STATE ENERGY AND RESEARCH DEVELOPMENT AUTHORITY AND THE POWER AUTHORITY OF THE STATE OF NEW YORK. THE AUTHORITY SHALL, NO LATER THAN JANUARY FIRST, TWO THOUSAND FOURTEEN, TRANSFER ALL HYDROELECTRIC POWER MADE AVAILABLE TO THE DOMESTIC AND RURAL CONSUMERS PURSUANT TO THIS SUBDIVISION TO SUCH POWER SOLUTIONS PROGRAM; AFTER SUCH DATE, THE POWER AUTHORITY OF THE STATE OF NEW YORK SHALL BE RESPONSIBLE FOR PAYING COSTS ASSOCIATED WITH THE LOSS OF HYDROPOWER TO THE RURAL AND DOMESTIC CONSUMERS UNTIL SUCH CONSUMERS RECEIVE ENERGY EFFICIENCY MEASURES IF REQUESTED BY THE CONSUMER. THE INVESTOR OWNED UTILITY THAT HAD PREVIOUSLY PROVIDED THE HYDROPOWER SHALL INFORM THE CONSUMER OF ITS RIGHT TO SUCH COST PAYMENT AVAILABILITY. THE POWER AUTHORITY OF THE STATE OF NEW YORK SHALL WORK WITH THE INVESTOR OWNED UTILITIES TO ESTABLISH MECHANISMS FOR SUCH PAYMENT TO THOSE CONSUMERS THAT HAVE REQUESTED PAYMENTS.

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

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

BY THE TRUSTEES, TO MAKE ANNUAL PAYMENTS IN AN AMOUNT OF ONE HUNDRED TWENTY MILLION DOLLARS FOR UP TO NINE HUNDRED FIFTY MEGAWATTS OF POWER SOLUTIONS PROGRAM AWARDS UPON THE RECOMMENDATION OF THE ECONOMIC DEVELOPMENT POWER ALLOCATION BOARD UNDER THE POWER SOLUTIONS PROGRAM AS PROVIDED IN SECTION ONE HUNDRED EIGHTY-EIGHT-A OF THE ECONOMIC DEVELOPMENT LAW. NOT LESS OFTEN THAN ANNUALLY, THE AUTHORITY SHALL IDENTIFY AND ADVISE THE ECONOMIC DEVELOPMENT POWER ALLOCATION BOARD OF THE AVAILABILITY OF THE FUNDS FOR SUCH AWARD.

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

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

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

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

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

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

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

B. THE COMPTROLLER SHALL BE CHARGED WITH SEEING THAT THE REPORTS MANDATED IN THIS SUBDIVISION ARE FILED ON TIME AND THAT THEY ARE SUFFICIENTLY COMPREHENSIVE. THE COMPTROLLER SHALL REPORT ANY DEFICIENCIES TO THE GOVERNOR AND TO THE LEGISLATIVE CHAIRS NAMED IN SUBDIVISION ONE OF THIS SECTION.

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

S 16. This act shall take effect immediately; provided that the amendments to section 183 of the economic development law made by sections two, seven, eight and nine of this act shall be subject to the expiration and reversion of such section pursuant to section 9 of chapter 316 of the laws of 1997, as amended, when upon such date the provisions of section ten of this act shall take effect; and provided, further, that the amendments to section 189 of the economic development law made by sections three and four of this act shall not affect the repeal of such section and shall be deemed repealed therewith.