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

5021

2011-2012 Regular Sessions

I N A S S E M B L Y

February 10, 2011

Introduced by M. of A. CAHILL -- (at request of the Governor) -- read once and referred to the Committee on Energy

AN ACT to amend the economic development law and the public authorities law, in relation to the creation of the recharge New York power program; and to amend the economic development law, the public authorities law, the tax 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 chapter 645 of the laws of 2006 amending the economic development law and other laws relating to reauthorizing the power authority of the state of New York to make contributions to the general fund, in relation to extending the expiration of the power for jobs program and the energy cost savings benefit program; to amend chapter 477 of the laws of 2009, amending the public authorities law relating to energy efficiency and clean energy initiatives of the power authority of the state of New York, in relation to making such provisions permanent and to repeal subdivision 16 of section 1005 of the public authorities law relating to energy audits

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

Section 1. Short title. This act shall be known and may be cited as the "recharge New York power program act."

S 2. The economic development law is amended by adding a new section 188-a to read as follows:

S 188-A. RECHARGE NEW YORK POWER PROGRAM. (A) DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(1) "APPLICABLE CRITERIA" SHALL MEAN THE CRITERIA SPECIFIED IN SUBDIVISION (C) OF THIS SECTION.

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

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

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(3) "RECHARGE NEW YORK POWER ALLOCATION" OR "ALLOCATION" SHALL MEAN AN ALLOCATION OF RECHARGE NEW YORK POWER BY THE POWER AUTHORITY OF THE STATE OF NEW YORK PURSUANT TO SECTION ONE THOUSAND FIVE OF THE PUBLIC AUTHORITIES LAW TO AN ELIGIBLE APPLICANT RECOMMENDED BY THE NEW YORK STATE ECONOMIC DEVELOPMENT POWER ALLOCATION BOARD IN ACCORDANCE WITH THIS SECTION.

(4) "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.

(5) "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.

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

(7) "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.

(8) "RECHARGE NEW YORK POWER" SHALL MEAN AND CONSIST OF EQUAL AMOUNTS OF (I) UP TO FOUR HUNDRED FIFTY-FIVE MEGAWATTS OF FIRM HYDROELECTRIC POWER FROM THE NIAGARA AND SAINT LAWRENCE HYDROELECTRIC PROJECTS TO BE WITHDRAWN FROM UTILITY CORPORATIONS THAT, PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, PURCHASED SUCH POWER FOR THE BENEFIT OF THEIR DOMESTIC AND RURAL CONSUMERS ("RECHARGE NEW YORK HYDROPOWER"), AND (II) POWER PROCURED BY THE AUTHORITY THROUGH A COMPETITIVE PROCUREMENT PROCESS, AUTHORITY SOURCES (OTHER THAN THE NIAGARA AND SAINT LAWRENCE PROJECTS) OR THROUGH AN ALTERNATE METHOD ("RECHARGE NEW YORK MARKET POWER").

(B) APPLICATIONS FOR RECHARGE NEW YORK POWER ALLOCATIONS. (1) THE BOARD MAY SOLICIT APPLICATIONS FOR RECHARGE NEW YORK POWER ALLOCATIONS UNDER THE PROGRAM CREATED BY THIS SECTION BY PUBLIC NOTICE BEGINNING NO LATER THAN FEBRUARY FIRST, TWO THOUSAND TWELVE. SUCH NOTICE MAY INCLUDE NEWSPAPER ADVERTISEMENTS, PRESS RELEASES, WEBSITE POSTINGS, PAPER OR ELECTRONIC MAILING, AND/OR SUCH OTHER FORM OF NOTICE AS THE BOARD FINDS APPROPRIATE IN CONSULTATION WITH THE AUTHORITY.

(2) APPLICATIONS FOR RECHARGE NEW YORK POWER ALLOCATIONS 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, AND A COPY SHALL BE PROVIDED TO THE AUTHORITY.

(3) AN APPLICANT WHO IS A RECIPIENT OF A HYDROELECTRIC POWER ALLOCATION OR BENEFITS SUPPORTED BY THE SALE OF HYDROELECTRIC POWER UNDER ANOTHER PROGRAM ADMINISTERED IN WHOLE OR PART BY THE AUTHORITY SHALL BE ELIGIBLE TO APPLY FOR AN ALLOCATION UNDER THE RECHARGE NEW YORK POWER PROGRAM ONLY IF IT IS IN SUBSTANTIAL COMPLIANCE WITH ITS CONTRACTUAL COMMITMENTS MADE IN CONNECTION WITH SUCH OTHER PROGRAM, PROVIDED HOWEVER THAT AN APPLICANT SHALL NOT RECEIVE A RECHARGE NEW YORK POWER ALLOCATION AND ANY OTHER AUTHORITY POWER PROGRAM BENEFITS WITH RESPECT TO THE SAME QUANTITY OF ELECTRICITY CONSUMED AT A FACILITY.

(4) SUBJECT TO CONFIDENTIALITY REQUIREMENTS, UPON RECEIPT OF EACH APPLICATION FROM THE BOARD, THE AUTHORITY SHALL PROMPTLY NOTIFY BY ELECTRONIC MEANS, INCLUDING WEBSITE 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 FOR WHICH AN ALLOCATION IS REQUESTED IS LOCATED. SUCH NOTICE SHALL PROVIDE THE NAME AND A DESCRIPTION OF THE APPLICANT, AND THE ADDRESS OF THE FACILITY FOR WHICH THE ALLOCATION IS REQUESTED. THE AUTHORITY SHALL ALSO DEVELOP A LISTING WHICH CONTAINS THE NAME AND A DESCRIPTION OF EACH APPLICANT, THE RECHARGE NEW YORK POWER PROGRAM ALLOCATION SOUGHT BY EACH APPLICANT, AND THE ADDRESS OF THE FACILITY FOR WHICH THE APPLICANT REQUESTS THE ALLOCATION, AND SHALL MAKE THE LISTING AVAILABLE FOR PUBLIC REVIEW ON THE AUTHORITY'S WEBSITE.

(C) REVIEW APPLICABLE CRITERIA AND RECOMMENDATIONS. (1) THE BOARD SHALL REVIEW APPLICATIONS SUBMITTED UNDER THE RECHARGE NEW YORK POWER PROGRAM. THE BOARD SHALL MAKE AN INITIAL DETERMINATION OF WHETHER THE APPLICANT IS AN ELIGIBLE APPLICANT. IN THE CASE OF AN ELIGIBLE APPLICANT, THE BOARD MAY RECOMMEND TO THE AUTHORITY THAT AN ALLOCATION OF RECHARGE NEW YORK POWER BE AWARDED TO AN APPLICANT FOR A FACILITY LOCATED IN THE STATE OF NEW YORK BASED ON CONSIDERATION OF THE FOLLOWING CRITERIA WHICH SHALL BE CONSIDERED IN THE AGGREGATE AND NO ONE OF WHICH SHALL BE PRESUMPTIVELY DETERMINATIVE:

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

(II) THE EXTENT TO WHICH A RECHARGE NEW YORK POWER ALLOCATION WILL RESULT IN NEW CAPITAL INVESTMENT IN THE STATE BY THE APPLICANT;

(III) THE EXTENT TO WHICH A RECHARGE NEW YORK POWER ALLOCATION IS CONSISTENT WITH ANY REGIONAL ECONOMIC DEVELOPMENT COUNCIL STRATEGIES AND PRIORITIES;

(IV) THE TYPE AND COST OF BUILDINGS, EQUIPMENT AND FACILITIES TO BE CONSTRUCTED, ENLARGED OR INSTALLED IF THE APPLICANT WERE TO RECEIVE AN ALLOCATION;

(V) THE APPLICANT'S PAYROLL, SALARIES, BENEFITS AND NUMBER OF JOBS AT THE FACILITY FOR WHICH A RECHARGE NEW YORK POWER ALLOCATION IS REQUESTED;

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

(VII) WHETHER THE APPLICANT, DUE TO THE COST OF ELECTRICITY, IS AT RISK OF CLOSING OR CURTAILING 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 RECHARGE NEW YORK POWER ALLOCATION;

(VIII) THE SIGNIFICANCE OF THE APPLICANT'S FACILITY THAT WOULD RECEIVE THE RECHARGE NEW YORK POWER ALLOCATION TO THE ECONOMY OF THE AREA IN WHICH SUCH FACILITY IS LOCATED;

(IX) THE EXTENT TO WHICH THE APPLICANT HAS INVESTED IN ENERGY EFFICIENCY MEASURES, WILL AGREE TO PARTICIPATE IN OR PERFORM ENERGY AUDITS OF ITS FACILITIES, WILL AGREE TO PARTICIPATE IN ENERGY EFFICIENCY PROGRAMS OF THE AUTHORITY, OR WILL COMMIT TO IMPLEMENT OR OTHERWISE MAKE TANGIBLE INVESTMENTS IN ENERGY EFFICIENCY MEASURES AS A CONDITION TO RECEIVING A RECHARGE NEW YORK POWER ALLOCATION;

(X) WHETHER THE APPLICANT RECEIVES A HYDROELECTRIC POWER ALLOCATION OR BENEFITS SUPPORTED BY THE SALE OF HYDROELECTRIC POWER UNDER ANOTHER PROGRAM ADMINISTERED IN WHOLE OR IN PART BY THE AUTHORITY;

(XI) THE EXTENT TO WHICH A RECHARGE NEW YORK POWER ALLOCATION WILL RESULT IN AN ADVANTAGE FOR AN APPLICANT IN RELATION TO THE APPLICANT'S COMPETITORS WITHIN THE STATE; AND

(XII) IN ADDITION TO THE FOREGOING CRITERIA, IN THE CASE OF A NOT-FOR-PROFIT CORPORATION, WHETHER THE APPLICANT PROVIDES CRITICAL SERVICES OR SUBSTANTIAL BENEFITS TO THE LOCAL COMMUNITY IN WHICH THE FACILITY FOR WHICH THE ALLOCATION IS REQUESTED IS LOCATED.

(2) A RECOMMENDATION BY THE BOARD THAT THE AUTHORITY PROVIDE A RECHARGE NEW YORK POWER ALLOCATION TO AN ELIGIBLE APPLICANT SHALL INCLUDE, BUT NEED NOT BE LIMITED TO:

(I) THE AMOUNT OF THE RECHARGE NEW YORK POWER ALLOCATION THE BOARD HAS DETERMINED SHOULD BE AWARDED TO SUCH ELIGIBLE APPLICANT, PROVIDED HOWEVER, THAT THE BOARD MAY RECOMMEND A RECHARGE NEW YORK POWER ALLOCATION IN AN AMOUNT THAT IS LESS THAN THE AMOUNT REQUESTED BY SUCH APPLICANT;

(II) AN EFFECTIVE INITIAL TERM OF THE ALLOCATION AND CONTRACT BETWEEN THE ELIGIBLE APPLICANT AND THE AUTHORITY WHICH SHALL NOT EXCEED SEVEN YEARS, PROVIDED HOWEVER THAT THE TERM OF ANY SUCH ALLOCATION AND CONTRACT SHALL NOT BECOME EFFECTIVE BEFORE JULY FIRST, TWO THOUSAND TWELVE;

(III) PROVISIONS FOR EFFECTIVE PERIODIC AUDITS OF THE RECIPIENT OF AN ALLOCATION FOR THE PURPOSE OF DETERMINING CONTRACT AND PROGRAM COMPLIANCE, AND FOR THE PARTIAL OR COMPLETE WITHDRAWAL OF AN ALLOCATION IF THE RECIPIENT FAILS TO MAINTAIN MUTUALLY AGREED UPON COMMITMENTS, RELATING TO, AMONG OTHER THINGS, EMPLOYMENT LEVELS, POWER UTILIZATION, CAPITAL INVESTMENTS, AND/OR ENERGY EFFICIENCY MEASURES;

(IV) A REQUIREMENT FOR AN AGREEMENT BY THE RECIPIENT OF AN ALLOCATION TO (A) UNDERTAKE AT ITS OWN EXPENSE AN ENERGY AUDIT OF ITS FACILITIES AT WHICH THE ALLOCATION IS CONSUMED AT LEAST ONCE DURING THE TERM OF THE ALLOCATION BUT IN ANY EVENT NOT LESS THAN ONCE EVERY FIVE YEARS, PROVIDED, HOWEVER, THAT SUCH REQUIREMENT MAY BE WAIVED OR MODIFIED BY THE AUTHORITY ON A SHOWING OF GOOD CAUSE BY THE RECIPIENT, AND (B) PROVIDE THE AUTHORITY WITH A COPY OF ANY SUCH AUDIT OR, AT THE AUTHORITY'S OPTION, A REPORT DESCRIBING THE RESULTS OF SUCH AUDIT, AND PROVIDE DOCUMENTATION REQUESTED BY THE AUTHORITY RELATING TO THE IMPLEMENTATION OF ANY EFFICIENCY MEASURES AT THE FACILITIES; AND

(V) A REQUIREMENT FOR AN AGREEMENT BY THE RECIPIENT OF AN ALLOCATION TO (A) MAKE ITS FACILITIES AVAILABLE AT REASONABLE TIMES AND INTERVALS FOR ENERGY AUDITS AND RELATED ASSESSMENTS THAT THE AUTHORITY DESIRES TO PERFORM, IF ANY, AT THE AUTHORITY'S OWN EXPENSE, AND (B) PROVIDE INFORMATION REQUESTED BY THE AUTHORITY OR ITS DESIGNEE IN SURVEYS, QUESTIONNAIRES AND OTHER INFORMATION REQUESTS RELATING TO ENERGY EFFICIENCY AND ENERGY-RELATED PROJECTS, PROGRAMS AND SERVICES.

(3) THE BOARD'S RECOMMENDATION SHALL REQUIRE THAT IF THE ACTUAL METERED LOAD AT THE FACILITY WHERE THE ALLOCATION IS UTILIZED IS LESS THAN THE ALLOCATION, SUCH ALLOCATION WILL BE REDUCED ACCORDINGLY, PROVIDED THAT, UNDER ITS CONTRACT WITH THE AUTHORITY, THE RECIPIENT SHALL BE AFFORDED A REASONABLE PERIOD WITHIN WHICH TO FULLY UTILIZE THE ALLOCATION, TAKING INTO ACCOUNT CONSTRUCTION SCHEDULES AND ECONOMIC CONDITIONS. THE AUTHORITY SHALL REALLOCATE ANY WITHDRAWN OR RELINQUISHED POWER FOR THE RECHARGE NEW YORK POWER PROGRAM CONSISTENT WITH PARAGRAPH FOUR OF THIS SUBDIVISION.

(4) THE BOARD MAY BASE ITS RECOMMENDATION ON WHICH ELIGIBLE APPLICANTS IT DETERMINES BEST MEET THE APPLICABLE CRITERIA; PROVIDED, HOWEVER, THAT THE BOARD SHALL DEDICATE RECHARGE NEW YORK POWER AS FOLLOWS: (I) AT LEAST THREE HUNDRED FIFTY MEGAWATTS FOR USE AT FACILITIES LOCATED WITHIN THE SERVICE TERRITORIES OF THE UTILITY CORPORATIONS THAT, PRIOR TO THE

EFFECTIVE DATE OF THIS SECTION, PURCHASED NIAGARA AND SAINT LAWRENCE HYDROELECTRIC POWER FOR THE BENEFIT OF THEIR DOMESTIC AND RURAL CONSUMERS; (II) AT LEAST TWO HUNDRED MEGAWATTS FOR THE PURPOSES OF ATTRACTING NEW BUSINESS TO THE STATE, CREATING NEW BUSINESS WITHIN THE STATE, OR ENCOURAGING THE EXPANSION OF EXISTING BUSINESSES WITHIN THE STATE, THAT CREATE NEW JOBS OR LEVERAGE NEW CAPITAL INVESTMENT; AND (III) AN AMOUNT NOT TO EXCEED ONE HUNDRED MEGAWATTS FOR ELIGIBLE SMALL BUSINESSES AND ELIGIBLE NOT-FOR-PROFIT CORPORATIONS.

(5) THE BOARD SHALL ISSUE A WRITTEN STATEMENT OF ITS FINDINGS AND CONCLUSIONS WITH RESPECT TO EVERY APPLICATION AND THE REASONS FOR ITS RECOMMENDATION TO THE AUTHORITY.

(6) A RECOMMENDATION FOR A RECHARGE NEW YORK POWER ALLOCATION SHALL QUALIFY AN APPLICANT TO ENTER INTO A CONTRACT WITH THE AUTHORITY PURSUANT TO THE TERMS AND CONDITIONS OF THE RECOMMENDATION BY THE BOARD AND ON SUCH OTHER TERMS AS THE AUTHORITY DETERMINES TO BE APPROPRIATE.

(7) THE BOARD SHALL NOT RECOMMEND A TOTAL OF RECHARGE NEW YORK POWER ALLOCATIONS IN EXCESS OF NINE HUNDRED TEN MEGAWATTS.

(D) THE AUTHORITY SHALL WORK COOPERATIVELY WITH THE DEPARTMENT OF PUBLIC SERVICE TO RECOMMEND TO THE PUBLIC SERVICE COMMISSION REDUCED RATES OR AN EQUIVALENT MECHANISM FOR THE DELIVERY BY UTILITY CORPORATIONS OF RECHARGE NEW YORK POWER PROGRAM ALLOCATIONS. ANY SUCH RECOMMENDATION FOR REDUCED DELIVERY RATES SHALL BE AT SUCH LEVEL AS TO ALLOW THE UTILITY TO (I) RECOVER THE INCREMENTAL COST OF PROVIDING DELIVERY SERVICE TO SUCH CUSTOMERS, AND (II) CONTRIBUTE TO THE COMMON DELIVERY AND RELATED COSTS WHICH OTHERWISE WOULD BE BORNE BY OTHER CUSTOMERS.

(E) THE AUTHORITY SHALL, AT A MINIMUM, REPORT QUARTERLY TO THE BOARD ON THE AVAILABILITY OF RECHARGE NEW YORK POWER FOR THE SUBSEQUENT TWELVE-MONTH PERIOD, THE AMOUNT OF SUCH POWER ALLOCATED AND OTHER RELEVANT INFORMATION.

(F) AFTER AN AWARD OF A RECHARGE NEW YORK POWER ALLOCATION, THE BOARD SHALL ACCEPT REQUESTS FROM RECIPIENTS WHO AT THE TIME OF SUCH REQUEST ARE ELIGIBLE APPLICANTS WHO ARE IN SUBSTANTIAL COMPLIANCE WITH CONTRACTUAL COMMITMENTS MADE IN CONNECTION WITH THE RECHARGE NEW YORK POWER PROGRAM FOR AN EXTENSION OF AN EXISTING ALLOCATION (I) DURING THE TWENTY-FOUR MONTH PERIOD IMMEDIATELY PRECEDING THE EXPIRATION OF THE TERM OF THE ALLOCATION, OR (II) AT SUCH EARLIER TIME WITH THE CONSENT OF THE AUTHORITY IN WRITING. REQUESTS FOR EXTENSIONS SHALL BE REVIEWED USING THE CRITERIA SET FORTH IN PARAGRAPH ONE OF SUBDIVISION (C) OF THIS SECTION.

(G) TRANSFERS OF RECHARGE NEW YORK POWER. NOTWITHSTANDING ANY OTHER APPROVAL REQUIRED BY STATUTE, REGULATION OR CONTRACT, THE TRANSFER OF A RECHARGE NEW YORK POWER ALLOCATION TO A DIFFERENT RECIPIENT, TO A DIFFERENT OWNER OR OPERATOR OF A FACILITY, OR TO A DIFFERENT FACILITY IS PROHIBITED UNLESS SPECIFICALLY APPROVED BY THE BOARD AS CONSISTENT WITH THE CRITERIA AND REQUIREMENTS OF THIS SECTION. ANY TRANSFER THAT OCCURS WITHOUT THE BOARD'S APPROVAL SHALL BE INVALID AND SUCH TRANSFER MAY SUBJECT THE TRANSFEROR TO REVOCATION OR MODIFICATION OF ITS ALLOCATION AND CONTRACT.

(H) (1) THE BOARD, IN CONSULTATION WITH THE AUTHORITY, SHALL SUBMIT TO THE GOVERNOR, TEMPORARY PRESIDENT OF THE SENATE, SPEAKER OF THE ASSEMBLY, MINORITY LEADER OF THE SENATE AND MINORITY LEADER OF THE ASSEMBLY AN EVALUATION OF THE EFFECTIVENESS OF THE RECHARGE NEW YORK POWER PROGRAM. SUCH EVALUATION SHALL FOCUS ON HOW THE PROGRAM HAS AIDED RECIPIENTS OF POWER ALLOCATIONS, AND MAY INCLUDE RECOMMENDATIONS FOR HOW THE PROGRAM CAN BE MADE MORE EFFECTIVE, AND SHALL BE BASED, IN PART, ON THE RELATIVE COSTS OF POWER FOR RECIPIENTS IN COMPARISON TO THE COST OF

POWER FOR NON-RECIPIENTS. SUCH EVALUATION SHALL BE SUBMITTED BY DECEMBER THIRTY-FIRST, TWO THOUSAND FIFTEEN AND BY DECEMBER THIRTY-FIRST EVERY FIVE YEARS THEREAFTER.

(2) THE BOARD, WITH ASSISTANCE FROM THE AUTHORITY, SHALL MAINTAIN THE NECESSARY RECORDS AND DATA REQUIRED TO PERFORM SUCH EVALUATION AND RESPOND TO REQUESTS FOR INFORMATION PURSUANT TO ARTICLE SIX OF THE PUBLIC OFFICERS LAW.

S 3. Section 1005 of the public authorities law is amended by adding a new subdivision 13-a to read as follows:

13-A. RECHARGE NEW YORK POWER PROGRAM. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, BUT SUBJECT TO THE TERMS AND CONDITIONS OF FEDERAL ENERGY REGULATORY COMMISSION LICENSES, TO ALLOCATE, REALLOCATE OR EXTEND, DIRECTLY OR BY SALE FOR RESALE, UP TO NINE HUNDRED TEN MEGAWATTS OF RECHARGE NEW YORK POWER TO ELIGIBLE APPLICANTS LOCATED WITHIN THE STATE OF NEW YORK UPON THE RECOMMENDATION OF THE NEW YORK STATE ECONOMIC DEVELOPMENT POWER ALLOCATION BOARD PURSUANT TO SECTION ONE HUNDRED EIGHTY-EIGHT-A OF THE ECONOMIC DEVELOPMENT LAW.

(B) RECHARGE NEW YORK POWER SHALL MEAN AND CONSIST OF EQUAL AMOUNTS OF (1) UP TO FOUR HUNDRED FIFTY-FIVE MEGAWATTS OF FIRM HYDROELECTRIC POWER FROM THE NIAGARA AND SAINT LAWRENCE HYDROELECTRIC PROJECTS TO BE WITHDRAWN, AS OF THE EARLIEST DATE SUCH POWER MAY BE WITHDRAWN CONSISTENT WITH CONTRACTUAL REQUIREMENTS, FROM UTILITY CORPORATIONS THAT, PRIOR TO THE EFFECTIVE DATE OF THIS SUBDIVISION, PURCHASED SUCH POWER FOR THE BENEFIT OF THEIR DOMESTIC AND RURAL CONSUMERS ("RECHARGE NEW YORK HYDROPOWER"), AND (2) POWER PROCURED BY THE AUTHORITY THROUGH MARKET SOURCES, A COMPETITIVE PROCUREMENT PROCESS, OR AUTHORITY SOURCES (OTHER THAN THE NIAGARA AND SAINT LAWRENCE PROJECTS) (COLLECTIVELY OR INDIVIDUALLY, "RECHARGE NEW YORK MARKET POWER"); PROVIDED, HOWEVER, THAT IF SUCH RECHARGE NEW YORK MARKET POWER COMES FROM AUTHORITY SOURCES, THE USE OF THAT POWER SHALL NOT REDUCE THE AVAILABILITY OF, OR CAUSE AN INCREASE IN THE PRICE OF, POWER PROVIDED BY THE AUTHORITY FOR ANY OTHER PROGRAM AUTHORIZED IN THIS ARTICLE OR PURSUANT TO ANY OTHER STATUTE.

(C) NOTWITHSTANDING SECTION ONE THOUSAND NINE OF THIS TITLE OR ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE AUTHORITY IS AUTHORIZED, BEGINNING JULY FIRST, TWO THOUSAND TWELVE, TO MAKE AVAILABLE, CONTRACT WITH AND SELL TO SUCH ELIGIBLE APPLICANTS AS ARE RECOMMENDED BY THE ECONOMIC DEVELOPMENT POWER ALLOCATION BOARD UP TO NINE HUNDRED TEN MEGAWATTS OF RECHARGE NEW YORK POWER FOR RECHARGE NEW YORK POWER ALLOCATIONS. A RECHARGE NEW YORK POWER ALLOCATION SHALL CONSIST OF EQUAL PARTS OF RECHARGE NEW YORK HYDROPOWER AND RECHARGE NEW YORK MARKET POWER AS SUCH TERMS ARE DEFINED IN PARAGRAPH (B) OF THIS SUBDIVISION; PROVIDED, HOWEVER, THAT PRIOR TO ENTERING INTO A CONTRACT WITH AN ELIGIBLE APPLICANT FOR THE SALE OF RECHARGE NEW YORK POWER, AND PRIOR TO THE PROVISION OF ELECTRIC SERVICE RELATING TO THE RECHARGE NEW YORK POWER ALLOCATION, THE AUTHORITY SHALL OFFER EACH ELIGIBLE APPLICANT THE OPTION TO DECLINE TO PURCHASE THE RECHARGE NEW YORK MARKET POWER COMPONENT OF SUCH ALLOCATION. IF AN ELIGIBLE APPLICANT DECLINES TO PURCHASE SUCH MARKET POWER FROM THE AUTHORITY, THE AUTHORITY SHALL HAVE NO RESPONSIBILITY FOR SUPPLYING SUCH MARKET POWER TO THE ELIGIBLE APPLICANT.

S 4. Section 1005 of the public authorities law is amended by adding a new subdivision 13-b to read as follows:

13-B. RESIDENTIAL CONSUMER DISCOUNT PROGRAMS. (A) RESIDENTIAL CONSUMER ELECTRICITY COST DISCOUNT. NOTWITHSTANDING ANY PROVISION OF THIS TITLE OR ARTICLE SIX OF THE ECONOMIC DEVELOPMENT LAW TO THE CONTRARY, THE AUTHORITY IS AUTHORIZED, AS DEEMED FEASIBLE AND ADVISABLE BY THE TRUSTEES, TO USE REVENUES FROM THE SALE OF HYDROELECTRIC POWER, AND SUCH

OTHER FUNDS OF THE AUTHORITY AS DEEMED FEASIBLE AND ADVISABLE BY THE TRUSTEES, TO FUND MONTHLY PAYMENTS TO BE MADE FOR THE BENEFIT OF SUCH CLASSES OF ELECTRICITY CONSUMERS AS ENJOYED THE BENEFITS OF AUTHORITY HYDROELECTRIC POWER WITHDRAWN PURSUANT TO SUBDIVISION THIRTEEN-A OF THIS SECTION, FOR THE PURPOSE OF MITIGATING PRICE IMPACTS ASSOCIATED WITH THE REALLOCATION OF SUCH POWER IN THE MANNER DESCRIBED IN THIS SUBDIVISION. SUCH MONTHLY PAYMENTS SHALL COMMENCE AFTER SUCH HYDROELECTRIC POWER IS WITHDRAWN. THE TOTAL ANNUAL AMOUNT OF MONTHLY PAYMENTS FOR EACH OF THE THREE TWELVE MONTH PERIODS FOLLOWING WITHDRAWAL OF SUCH HYRDOELECTRIC POWER SHALL BE ONE HUNDRED MILLION DOLLARS. THE TOTAL ANNUAL AMOUNT OF MONTHLY PAYMENTS FOR EACH OF THE TWO SUBSEQUENT TWELVE MONTH PERIODS SHALL BE SEVENTY MILLION DOLLARS AND FIFTY MILLION DOLLARS, RESPECTIVELY. THEREAFTER, THE TOTAL ANNUAL AMOUNT OF MONTHLY PAYMENTS FOR EACH TWELVE MONTH PERIOD SHALL BE THIRTY MILLION DOLLARS. THE TOTAL AMOUNT OF MONTHLY PAYMENTS SHALL BE APPORTIONED BY THE AUTHORITY AMONG THE UTILITY CORPORATIONS THAT, PRIOR TO THE EFFECTIVE DATE OF THIS SUBDIVISION, PURCHASED SUCH HYDROELECTRIC POWER FOR THE BENEFIT OF THEIR DOMESTIC AND RURAL CONSUMERS ACCORDING TO THE RELATIVE AMOUNTS OF SUCH POWER PURCHASED BY SUCH CORPORATIONS. THE MONTHLY PAYMENTS SHALL BE CREDITED TO THE ELECTRICITY BILLS OF SUCH CORPORATIONS' DOMESTIC AND RURAL CONSUMERS IN A MANNER TO BE DETERMINED BY THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK. THE MONTHLY CREDIT PROVIDED BY ANY SUCH CORPORATION TO ANY ONE CONSUMER SHALL NOT EXCEED THE TOTAL MONTHLY ELECTRIC UTILITY COST INCURRED BY SUCH CONSUMER.

(B) AGRICULTURAL CONSUMER ELECTRICITY COST DISCOUNT. (1) BEGINNING WITH THE SECOND TWELVE MONTH PERIOD AFTER SUCH HYDROELECTRIC POWER IS WITHDRAWN, UP TO EIGHT MILLION DOLLARS OF THE RESIDENTIAL CONSUMER ELECTRICITY COST DISCOUNT ESTABLISHED BY PARAGRAPH (A) OF THIS SUBDIVISION SHALL BE DEDICATED FOR MONTHLY PAYMENTS TO AGRICULTURAL PRODUCERS WHO RECEIVE ELECTRIC SERVICE AT THE RESIDENTIAL RATE. THE TOTAL AMOUNT OF MONTHLY PAYMENTS SHALL BE APPORTIONED BY THE AUTHORITY AMONG THE UTILITY CORPORATIONS IN THE SAME MANNER AS THEY ARE APPORTIONED IN PARAGRAPH (A) OF THIS SUBDIVISION. MONTHLY PAYMENTS SHALL BE CREDITED TO THE ELECTRICITY BILLS OF SUCH CORPORATIONS' AGRICULTURAL CONSUMERS IN A MANNER TO BE DETERMINED BY THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK. THE COMBINED MONTHLY CREDIT, UNDER THIS PARAGRAPH AND PARAGRAPH (A) OF THIS SUBDIVISION, PROVIDED BY ANY SUCH CORPORATION TO ANY ONE CONSUMER SHALL NOT EXCEED THE TOTAL MONTHLY ELECTRIC UTILITY COST INCURRED BY SUCH CONSUMER.

(2) THE AUTHORITY SHALL WORK COOPERATIVELY WITH THE DEPARTMENT OF PUBLIC SERVICE TO EVALUATE THE AGRICULTURAL CONSUMER ELECTRICITY COST DISCOUNT, WHICH SHALL INCLUDE AN ASSESSMENT OF THE BENEFITS TO RECIPIENTS COMPARED TO THE BENEFITS THE RECIPIENTS RECEIVED FROM THE AUTHORITY'S HYDROELECTRIC POWER, WITHDRAWN PURSUANT TO SUBDIVISION THIRTEEN-A OF THIS SECTION, DURING THE TWELVE MONTH PERIOD ENDING DECEMBER THIRTY-FIRST, TWO THOUSAND TEN, AND COMPARED TO OTHER AGRICULTURAL CONSUMERS THAT DID NOT CHOOSE TO RECEIVE THE DISCOUNT.

S 5. Section 1005 of the public authorities law is amended by adding a new subdivision 18 to read as follows:

18. 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 TEMPORARY PRESIDENT OF THE SENATE, SPEAKER OF THE ASSEMBLY, THE MINORITY LEADER OF THE SENATE AND THE MINORITY LEADER OF THE ASSEMBLY, 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:

A. THE NUMBER OF RECIPIENTS OF ECONOMIC POWER PROGRAM BENEFITS, THE ECONOMIC REGION IN WHICH EACH RECIPIENT IS LOCATED, THE TYPE AND AMOUNT OF ASSISTANCE PROVIDED, MEGAWATTS OF POWER 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; AND

B. COST TO THE AUTHORITY TO PROVIDE ECONOMIC DEVELOPMENT POWER PROGRAMS DURING THE PREVIOUS FISCAL YEAR.

S 6. Transitional electricity discount. Notwithstanding any provision of title 1 of article 5 of the public authorities law or article 6 of the economic development law to the contrary, with respect to applicants who 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 do not receive a recommendation from the New York state economic development power allocation board for a recharge New York power allocation pursuant to section 188-a of the economic development law, such board shall recommend that the power authority of the state of New York provide for a transitional electricity discount to such applicants. The power authority of the state of New York is authorized, as deemed feasible and advisable by the trustees, to provide such transitional electricity discounts as recommended by the New York state economic development power allocation board. The power authority of the state of New York shall identify and advise such board whether sufficient funds are available for the funding of such transitional electricity discounts through June 30, 2016. The amount of the transitional electricity discount for the period July 1, 2012 through June 30, 2014 shall be equivalent to 66 percent of the unit (per kilowatt-hour) value of the savings received by the applicant under the power for jobs or energy cost savings benefit programs during the 12 months ending on December 31, 2010. The amount of the transitional electricity discount for the period July 1, 2014 through June 30, 2016 shall be equivalent to 33 percent of the unit (per kilowatt-hour) value of the savings received by the applicant under the power for jobs or energy cost savings benefit programs during the 12 months ending on December 31, 2010.

S 7. 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 311 of the laws of 2010, is amended to read as follows:

S 9. This act shall take effect immediately and shall expire and be deemed repealed [May 15, 2011] JUNE 30, 2012.

S 8. 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 311 of the laws of 2010, 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, 2011] JUNE 30, 2012.

S 9. Paragraphs 2 and 4 of subdivision (h) of section 183 of the economic development law, as amended by chapter 311 of the laws of 2010, are amended to read as follows:

2. During the period commencing on November first, two thousand five and ending on [May fifteenth, two thousand eleven] JUNE THIRTIETH, TWO THOUSAND TWELVE 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, two thousand eleven] JUNE THIRTIETH, TWO THOUSAND TWELVE. 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] MAY FIFTEENTH, TWO THOUSAND ELEVEN through [May fifteenth, two thousand eleven] JUNE THIRTIETH, TWO THOUSAND TWELVE, 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 10. The opening paragraph of paragraph 5 of subdivision (a) of section 189 of the economic development law, as amended by chapter 311 of the laws of 2010, 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] JUNE THIRTIETH, two thousand [eleven] TWELVE. 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, PROVIDED HOWEVER THAT NOTWITHSTANDING THE FOREGOING, FOR THE PERIOD JULY FIRST, TWO THOUSAND ELEVEN THROUGH JUNE THIRTIETH, TWO THOUSAND TWELVE, THE BASIC REIMBURSEMENT SHALL BE AN AMOUNT SUCH THAT THE RECIPIENT RECEIVES UNIT (PER KILOWATT-HOUR) ELECTRICITY SAVINGS EQUIVALENT TO THE AVERAGE UNIT ELECTRICITY SAVINGS RECEIVED DURING THE TWELVE MONTHS ENDING ON DECEMBER THIRTY-FIRST, TWO THOUSAND TEN.

S 11. Subdivisions (f) and (l) of section 189 of the economic development law, as amended by chapter 311 of the laws of 2010, 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, two thousand eleven] JUNE THIRTIETH, TWO THOUSAND TWELVE. 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, two thousand eleven] JUNE THIRTIETH, TWO THOUSAND TWELVE.

(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] MAY FIFTEENTH, TWO THOUSAND ELEVEN through [May fifteenth, two thousand eleven] JUNE THIRTIETH, TWO THOUSAND TWELVE, 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, two thousand eleven] JUNE THIRTIETH, TWO THOUSAND TWELVE. 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 12. Subdivision 9 of section 186-a of the tax law, as amended by chapter 217 of the laws of 2009, is amended to read as follows:

9. Notwithstanding any other provision of this chapter or any other law to the contrary, for taxable periods nineteen hundred ninety-seven through and including two thousand [ten] TWELVE, any utility which delivers power under the power for jobs program, as established by section one hundred eighty-nine of the economic development law, shall be allowed a credit, subject to the limitations thereon contained in this subdivision, against the tax imposed under this section equal to

net lost revenues from the delivery of power under such power for jobs program. Net lost revenues means the "net receipts" less "net utility revenue" from such delivery of power. For purposes of this subdivision, "net receipts" shall mean the amount that the utility would have otherwise received from customers receiving power pursuant to allocations by the New York state economic development power allocation board in accordance with section one hundred eighty-nine of the economic development law, or from customers whose allocation has been transferred to an energy service company, or from energy service companies to which such allocation has been transferred, pursuant to its tariff supervised by the public service commission for substantially comparable service otherwise applicable to such customers or energy service companies in the absence of such designation, less the utility's annual average incremental short-term variable and capacity costs of providing such power in the absence of such purchase. For the purposes of this subdivision, "net utility revenue" shall mean the revenues the utility actually receives in accordance with such section one hundred eighty-nine from such customers so designated by the New York state economic development power allocation board or from customers whose allocation has been transferred to an energy service company, or from the energy service companies to which a power for jobs allocation has been transferred, less the utility's cost of such power under such program. Provided, however, that any credit under this section shall be used only with respect to the same taxable year during which such credit arose and shall not be capable of being carried forward or backward to any other taxable period. Nor shall any credit be allowed to any utility for the total amount of power, expressed in kilowatt hours, purchased by the customers of such utility under such program during the taxable period that exceeds the prorated "baseline energy use" by all customers of that utility purchasing power under such program during the taxable period. "Baseline energy use" with respect to each customer shall mean the largest amount of kilowatt hours of energy used by such customer during any twelve consecutive month period occurring during the preceding thirty months immediately preceding the New York state economic development power allocation board's recommendation of such customer's application, prorated to reflect the length of time of the customer's participation in such program during the taxable period. Provided further, however, that in accordance with subdivision (k) of section one hundred eighty-nine of the economic development law no tax credit shall be available for any revenue losses when a utility has declined to purchase power allocated for sale under such program. No electric corporation shall be allowed the tax credit authorized by this subdivision until it shall file a certificate from the department of public service for the period covered by the return verifying that the calculation of such tax credit complies with this subdivision and the department of public service has approved such certificate and forwarded a copy of such approved certificate to the commissioner or any amended certificate resulting from the need for correction. The credit allowed by this subdivision shall not be applicable in calculating any other tax imposed or authorized to be imposed by this chapter or any other law, and the amount of the tax surcharge imposed under section one hundred eighty-six-c of this article shall be calculated and payable as if the credit provided for by this subdivision were not allowed.

S 13. Subparagraph 2 of paragraph g of the ninth undesignated paragraph of section 1005 of the public authorities law, as amended by chapter 217 of the laws of 2009, is amended to read as follows:

2. The authority, as deemed feasible and advisable by the trustees, is authorized to make payments to recipients of the power for jobs electricity savings reimbursements and additional annual voluntary contributions into the state treasury to the credit of the general fund. The authority shall make such contributions to the state treasury no later than ninety days after the end of the calendar year in which a credit under subdivision nine of section one hundred eighty-six-a of the tax law is available: (a) for the additional three hundred megawatts of power under the fourth phase of the program provided under chapter sixty-three of the laws of two thousand and under the fifth phase for the additional one hundred eighty-three megawatts provided under chapter two hundred twenty-six of the laws of two thousand two; and (b) for any extension of any contract for allocations under the fourth phase of the program and under the fifth phase of the program. Payments for any electricity savings reimbursement under section one hundred eighty-nine of the economic development law shall be made pursuant to such section. Such annual contributions shall be equal to fifty percent of the total amount of such credits available each year to all local distributors of electricity. In addition, such authorization for contribution in state fiscal year two thousand two--two thousand three shall be equal to the total amount of credit available in two thousand one and two thousand two; and such authorization for contribution in state fiscal year two thousand three--two thousand four shall be equal to the total amount of credit available in two thousand three; under subdivision nine of section one hundred eighty-six-a of the tax law under the fourth phase of the program for the additional three hundred megawatts provided under chapter sixty-three of the laws of two thousand and under the fifth phase for the additional one hundred eighty-three megawatts provided under chapter two hundred twenty-six of the laws of two thousand two. In state fiscal year two thousand four--two thousand five, such authorized annual contribution shall be equal to one hundred percent of the total amount of such credits available each year to all local distributors of electricity. Such authorization for contribution in state fiscal years two thousand four and two thousand five shall be equal to the total amount of credit available in two thousand four and two thousand five; under subdivision nine of section one hundred eighty-six-a of the tax law under the fourth phase of the program for the additional three hundred megawatts provided under chapter sixty-three of the laws of two thousand and under the fifth phase for the additional one hundred eighty-three megawatts provided under chapter two hundred twenty-six of the laws of two thousand two. In addition, such authorization for contribution for any extension of any contract for allocations under the fourth phase of the program and under the fifth phase of the program in each state fiscal year shall be equal to the total amount of credit or reimbursement available in state fiscal year two thousand four--two thousand five, state fiscal year two thousand five--two thousand six and two thousand six--two thousand seven. Additionally, notwithstanding any other section of law, the authority is authorized to make a contribution in an amount related to total amounts of credit received under phases one, two, three, four and five of the program. In no case shall the contribution for state fiscal year two thousand five--two thousand six be less than seventy-five million dollars. The contribution for state fiscal year two thousand six--two thousand seven shall be one hundred million dollars. The contribution for state fiscal year two thousand seven--two thousand eight shall be thirty million dollars. The contribution for state fiscal year two thousand eight--two thousand nine shall

be twenty-five million dollars. The contribution for state fiscal year two thousand nine--two thousand ten shall be twelve million five hundred thousand dollars. THE CONTRIBUTION FOR STATE FISCAL YEAR TWO THOUSAND TEN--TWO THOUSAND ELEVEN SHALL BE SEVEN AND ONE-HALF MILLION DOLLARS. THE CONTRIBUTION FOR STATE FISCAL YEAR TWO THOUSAND ELEVEN--TWO THOUSAND TWELVE SHALL BE SIX MILLION DOLLARS. The department of public service shall estimate the payment due by the end of the calendar year in which the credit is available. In no case shall the amount of the total annual contributions for the years during which delivery and sale of power associated with all power for jobs phases and any extensions thereof takes place exceed the aggregate total of four hundred [sixty-one] SEVENTY-FIVE million [five hundred thousand] dollars.

S 14. The opening paragraph of subdivision 5 of section 1005 of the public authorities law, as amended by chapter 294 of the laws of 1968, is amended to read as follows:

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 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, 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 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 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.

S 15. Subdivision 16 of section 1005 of the public authorities law, as added by chapter 217 of the laws of 2009, is REPEALED.

S 16. Subdivision 16 of section 1005 of the public authorities law, as added by chapter 477 of the laws of 2009, is renumbered subdivision 17, and paragraph (a) of such subdivision is amended to read as follows:

(a) As deemed feasible and advisable by the trustees, to finance and design, develop, construct, implement, provide and administer energy-related projects, programs and services for any public entity and any recipient of the economic development power, expansion power, replacement power, preservation power, high load factor power, municipal distribution agency power, [and the] power for jobs, AND RECHARGE NEW YORK POWER programs administered by the authority. In establishing and providing high performance and sustainable building programs and services authorized by this subdivision, the authority is authorized to consult standards, guidelines, rating systems, and/or criteria established or adopted by other organizations, including but not limited to the United States green building council under its leadership in energy and environmental design (LEED) programs, the green building initiative's green globes rating system, and the American National Standards Institute. The source of any financing and/or loans provided by the authority for the purposes of this subdivision may be the proceeds of notes issued pursuant to section one thousand nine-a of this title, the proceeds of bonds issued pursuant to section one thousand ten of this title, or any other available authority funds.

S 17. Section 2 of chapter 477 of the laws of 2009, amending the public authorities law relating to energy efficiency and clean energy initiatives of the power authority of the state of New York, is amended to read as follows:

S 2. This act shall take effect immediately [and shall expire three years after it shall have become a law; provided that such expiration shall not affect the validity of any energy services contract authorized by this act and entered into prior to its expiration].

S 18. The opening paragraph of subdivision 6 of section 1005 of the public authorities law, as amended by chapter 294 of the laws of 1968, is amended to read as follows:

To develop, maintain, manage and operate its projects other than the Niagara and Saint Lawrence hydroelectric projects so as (i) to provide an adequate supply of energy for optimum utilization of its hydroelectric projects, (ii) to attract and expand high load factor industry, (iii) to provide for the additional needs of its municipal electric and rural electric cooperative customers, (IV) TO PROVIDE A SUPPLY OF POWER AND ENERGY FOR USE IN THE RECHARGE NEW YORK POWER PROGRAM AS RECHARGE NEW YORK MARKET POWER, and [(iv)] (V) to assist in maintaining an adequate, dependable electric power supply for the state.

S 19. 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 20. This act shall take effect immediately; provided that:

a. the amendments to section 183 of the economic development law made by section nine of this act shall not affect the expiration of such section and shall be deemed to expire therewith;

b. the amendments to section 189 of the economic development law made by sections ten and eleven of this act shall not affect the repeal of such section and shall be deemed repealed therewith;

c. the amendments to subdivision 9 of section 186-a of the tax law made by section twelve of this act shall not affect the repeal of such subdivision and shall be deemed repealed therewith; and

d. the amendments to subparagraph 2 of paragraph g of the 9th undesignated paragraph of section 1005 of the public authorities law made by section thirteen of this act shall not affect the expiration of such subparagraph and shall be deemed to expire therewith.