

5583--A

2013-2014 Regular Sessions

I N   S E N A T E

May 22, 2013

---

Introduced by Sens. RITCHIE, GRIFFO -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public authorities law, in relation to authorizing unallocated power to be used for the specified purposes

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

1     Section 1. Section 1005 of the public authorities law is amended by  
2     adding four undesignated paragraphs to be the thirteenth, fourteenth,  
3     fifteenth and sixteenth undesignated paragraphs to read as follows:  
4     THE AUTHORITY IS AUTHORIZED TO ALLOCATE UP TO TWENTY MEGAWATTS OF  
5     POWER FROM THE SAINT LAWRENCE-FDR PROJECT HEREAFTER KNOWN AS "ST.  
6     LAWRENCE COUNTY ECONOMIC DEVELOPMENT POWER" WHICH IS UNALLOCATED AS OF  
7     THE EFFECTIVE DATE OF THIS PARAGRAPH, FOR SALE INTO THE WHOLESALE  
8     MARKET, THE NET EARNINGS FROM WHICH AND SUCH OTHER FUNDS OF THE AUTHORI-  
9     TY AS DEEMED FEASIBLE AND ADVISABLE BY THE TRUSTEES, SHALL BE USED FOR  
10    PURPOSES OF THE ST. LAWRENCE RIVER VALLEY ECONOMIC DEVELOPMENT FUND  
11    (HEREINAFTER REFERRED TO AS THE "SLRVED FUND"). SUCH PROCEEDS SHALL BE  
12    DISBURSED UPON RECOMMENDATION OF THE ST. LAWRENCE RIVER VALLEY REDEVEL-  
13    OPMENT DEVELOPMENT AGENCY AND/OR THE ST. LAWRENCE INDUSTRIAL DEVELOPMENT  
14    AGENCY AND/OR THEIR SUCCESSORS (HEREINAFTER THE RVRDA ADVISORY GROUP)  
15    PURSUANT TO THE FUND CONTEMPLATED IN THE AGREEMENT TO FUND THE ST.  
16    LAWRENCE RIVER VALLEY REDEVELOPMENT DEVELOPMENT AGENCY DATED JUNE 2,  
17    2010 BY AND BETWEEN THE POWER AUTHORITY OF THE STATE OF NEW YORK  
18    (PASNY), THE ST. LAWRENCE COUNTY INDUSTRIAL DEVELOPMENT AGENCY LOCAL  
19    DEVELOPMENT CORPORATION AND THE PASNY HOST COMMUNITIES ON THE ST.  
20    LAWRENCE RIVER INCLUDING THE TOWNS OF WADDINGTON, LOUISVILLE, LISBON AND  
21    MASSENA, THE VILLAGES OF WADDINGTON AND MASSENA AND THE COUNTY OF ST.  
22    LAWRENCE. FOR PURPOSES OF THIS PARAGRAPH, THE TERM NET EARNINGS SHALL

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

LBD11041-02-3

MEAN THE DIFFERENCE BETWEEN THE POWER AUTHORITY'S COST-BASED HYDROELECTRIC RATE FOR POWER AND ENERGY AND THE PREVAILING WHOLESALE MARKET PRICE AT THE PROJECT IN THE MARKET ADMINISTERED BY THE NEW YORK INDEPENDENT SYSTEM OPERATOR.

THE RVRDA ADVISORY GROUP SHALL SOLICIT APPLICATIONS FOR AND MAKE RECOMMENDATIONS FOR APPROVAL OF SLRVED FUND BENEFITS MADE AVAILABLE PURSUANT TO THIS PARAGRAPH. EACH APPLICATION FOR SLRVED FUND BENEFITS SHALL BE EVALUATED UNDER CRITERIA ADOPTED BY THE RVRDA ADVISORY GROUP, IN CONSULTATION WITH THE POWER AUTHORITY OF THE STATE OF NEW YORK, WHICH CRITERIA SHALL BE DESIGNED TO PROMOTE ECONOMIC DEVELOPMENT, MAINTAIN AND DEVELOP JOBS, AND ENCOURAGE NEW CAPITAL INVESTMENT WITHIN ST. LAWRENCE COUNTY. SUCH CRITERIA SHALL ADDRESS BUT NEED NOT BE LIMITED TO: (A) THE OVERALL ECONOMIC IMPACT OF THE APPLICANT IN TERMS OF THE NUMBER OF JOBS TO BE CREATED OR RETAINED, AVERAGE ANNUAL PAYROLL, CAPITAL INVESTMENT AND USE OF NEW YORK STATE SUPPLIERS; (B) THE LIKELIHOOD THAT IN THE ABSENCE OF APPROVAL OF THE SLRVED FUND BENEFIT, THE APPLICANT WOULD CLOSE, CONTRACT OR RELOCATE OUTSIDE THE STATE OF NEW YORK; (C) THE APPLICANT'S COMPLIANCE WITH THE COMMITMENT TO RETAIN AND/OR CREATE JOBS CONTAINED IN ITS PRIOR POWER CONTRACT WITH THE POWER AUTHORITY OF THE STATE OF NEW YORK; (D) THE EXTENT TO WHICH A SLRVED FUND BENEFIT WILL AFFECT THE OVERALL PRODUCTIVITY OR COMPETITIVENESS OF THE APPLICANT'S BUSINESS AND ITS EXISTING EMPLOYMENT WITHIN THE STATE; AND (E) THE OVERALL IMPACT OF THE PROJECT IN TERMS OF THE ECONOMIC VIABILITY OF IDENTIFIED ULTIMATE SITE OR USER INCLUDING THE PROJECT'S ABILITY TO INDUCE ADDITIONAL COMMERCIAL ACTIVITY ON THE SITE, REVITALIZE AN URBAN AREA, AND ITS COMPLIANCE WITH REGIONAL DEVELOPMENT PLANS.

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

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

S 2. The opening paragraph of subdivision 13 of section 1005 of the public authorities law, as amended by chapter 645 of the laws of 2006, is amended to read as follows:

Notwithstanding any other provision of law to the contrary but subject to the terms and conditions of federal energy regulatory commission licenses, to allocate or reallocate directly or by sale for resale, two hundred fifty megawatts of firm Niagara project hydroelectric power as "expansion power" and four hundred forty-five megawatts of firm Niagara project hydroelectric power as "replacement power" to businesses within

1 the state located within thirty miles of the Niagara project, and four  
2 hundred ninety megawatts of firm and interruptible power from the Saint  
3 Lawrence-FDR project as "preservation power" sold to businesses located  
4 within the counties of Jefferson, Saint Lawrence and Franklin, provided  
5 that the amount of expansion power allocated to businesses in Chautauqua  
6 county on January first, nineteen hundred eighty-seven shall continue to  
7 be allocated in such county and, provided further that up to seventy  
8 megawatts of replacement power, up to thirty-eight and six-tenths mega-  
9 watts of preservation power from the Saint Lawrence-FDR project which is  
10 relinquished or withdrawn after the effective date of chapter three  
11 hundred thirteen of the laws of two thousand five which amended this  
12 subdivision and, for the period ending on December thirty-first, two  
13 thousand six, up to twenty megawatts of other power from the Saint  
14 Lawrence-FDR project which is unallocated (HEREINAFTER "ST. LAWRENCE  
15 COUNTY ECONOMIC DEVELOPMENT POWER" OR SLCEDP) as of the effective date  
16 of chapter three hundred thirteen of the laws of two thousand five which  
17 amended this subdivision, shall be allocated by the authority together  
18 with such other funds of the authority as the trustees deem feasible and  
19 advisable for energy cost savings benefits pursuant to the twelfth  
20 undesignated paragraph of this section, AND FOR ST. LAWRENCE RIVER  
21 VALLEY ECONOMIC DEVELOPMENT FUND BENEFITS PURSUANT TO THIS SECTION.  
22 Provided, however, that the amount of replacement, preservation power,  
23 or the additional twenty megawatts of Saint Lawrence-FDR power for the  
24 period ending December thirty-first, two thousand six made available for  
25 such purpose, used for energy cost savings benefits that are relin-  
26 quished by or withdrawn from a recipient thereof shall be offered by the  
27 authority proportionately for a period of six months for reallocation to  
28 applicants who qualify respectively for replacement or preservation  
29 power allocations as provided in this subdivision. If such power is not  
30 allocated within such period it shall be allocated for the purpose of  
31 energy cost savings benefits pursuant to [subdivision (h) of] section  
32 one hundred eighty-three of the economic development law, EXCEPT TO THE  
33 EXTENT USED TO FUND THE ST. LAWRENCE RIVER VALLEY ECONOMIC DEVELOPMENT  
34 FUND. The authority shall negotiate contracts on reasonable terms and  
35 conditions to renew or extend every permanent contract allocation of  
36 expansion power in effect on the effective date of this subdivision and,  
37 to the extent consistent with such contracts, the authority shall nego-  
38 tiate contracts on reasonable terms and conditions to extend or renew  
39 all other allocations or allotments of such power in effect on such  
40 date. The authority shall negotiate contracts on reasonable terms and  
41 conditions to renew or extend for a period of at least five years every  
42 permanent contract allocation of replacement power in effect on the  
43 effective date of chapter three hundred thirteen of the laws of two  
44 thousand five which added this sentence and that would expire by its  
45 terms on or before the end of the initial federal energy regulatory  
46 commission license for the Niagara project; provided that, in negotiat-  
47 ing the terms and conditions of such contracts, the authority may  
48 consider a business' compliance with all current contractual obli-  
49 gations, including employment and power usage commitments. Contracts  
50 entered into pursuant to this subdivision shall contain reasonable  
51 provisions providing for the partial or complete withdrawal of the power  
52 in the event the recipient fails to maintain mutually agreed levels of  
53 employment, investment, and power utilization. Expansion or replacement  
54 power relinquished by businesses or withdrawn by the authority shall be  
55 allocated directly or by sale for resale by the authority to businesses  
56 within the state located within thirty miles of the Niagara project

1 provided, that the amount of power allocated to businesses in Chautauqua  
2 county on January first, nineteen hundred eighty-seven shall be allo-  
3 cated in such county. Preservation power that is relinquished by busi-  
4 nesses or withdrawn by the authority shall be allocated directly or by  
5 sale for resale by the authority within the counties of Jefferson, Saint  
6 Lawrence and Franklin. ST. LAWRENCE COUNTY ECONOMIC DEVELOPMENT POWER  
7 SHALL BE USED TO FUND THE SLRVED FUND PURSUANT TO THIS SECTION. Allo-  
8 cations made pursuant to this paragraph shall be made in accordance with  
9 criteria established by the trustees. Such criteria shall address the  
10 expansion of industry and employment pursuant to paragraph (a) of this  
11 subdivision and the revitalization of existing industry pursuant to  
12 paragraph (b) of this subdivision. PRESERVATION POWER OR ST. LAWRENCE  
13 COUNTY ECONOMIC DEVELOPMENT POWER RELINQUISHED OR WITHDRAWN OR CURRENTLY  
14 NOT ACCESSED, AS SHALL BE DETERMINED BY THE TRUSTEES, SHALL BE ALLOCATED  
15 FOR THE PURPOSES OF ST. LAWRENCE RIVER VALLEY ECONOMIC DEVELOPMENT FUND  
16 BENEFITS PURSUANT TO THIS SECTION. PROCEEDS TO SUCH ST. LAWRENCE RIVER  
17 VALLEY ECONOMIC DEVELOPMENT FUND SHALL NOT PRECLUDE THE AUTHORITY FROM  
18 ALLOCATING EXPANSION OR REPLACEMENT POWER TO ELIGIBLE COMPANIES UNDER  
19 THE PROVISIONS OF THIS SECTION.

20 S 3. This act shall take effect immediately.