STATE OF NEW YORK

1535

2019-2020 Regular Sessions

IN SENATE

January 15, 2019

Introduced by Sen. KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the economic development law, in relation to enacting the take charge New York power program

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 188-a of the economic development law is amended by adding a new subdivision (i) to read as follows:

(i) Any applicant currently receiving proceeds under this section shall also be permitted to apply for benefits under section one hundred eighty-eight-b of this article.

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

§ 188-b. Take charge 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.

(3) "Eligible applicant" shall mean an eligible business, eligible small business, eligible industrial development agency 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.

(4) "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.

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

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(5) "Eligible not-for-profit corporation" shall mean a corporation defined in subparagraph five of paragraph (a) of section one hundred two of the not-for-profit corporation law.

(6) "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.

(7) "Microgrid" shall mean a group of interconnected loads and distributed energy resources within clearly defined electrical boundaries that acts as a single controllable entity with respect to the grid and that disconnects from such grid to enable it to operate in both grid-connected or island mode. Any entity providing microgrid technology shall be structured as a special purpose entity.

(8) "Infrastructure" shall mean the components necessary for transmission and distribution of energy on the microgrid.

(9) "Takecharge New York power" shall mean a subsidy provided by the authority, subject to an equity assurance to be matched by the applicant, to cover the development and infrastructure needed to install and maintain a microgrid at each applicant's place of business, as it relates to a microgrid the allocation would be the value of the monetary equivalent of the power allocation that would have been granted under section one hundred eighty-eight-a of this article.

(b) Applications for takecharge New York power. (1) The board may solicit applications for takecharge New York power under the program created by this section by public notice beginning no later than September first, two thousand twenty. 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. The board shall also work with local industrial development agencies and economic development agencies located throughout the state to identify and solicit applications from businesses and corporate parks that meet the criteria set forth in subdivision (c) of this section.

(2) Applications for takecharge 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) 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 takecharge New York power benefit sought by each applicant, and the address of the facility for which the applicant requests the benefit, and shall make the listing available for public review on the authority's website.

(4) Applications may be made by multiple eligible applicants, subject to acceptance by the board, if each eligible applicant is located in a geographic proximity to each other. The board shall set the requirements of what constitutes geographic proximity. The board shall treat such

combined applications as a single application, and use the cumulative totals when evaluating the applicable criteria set forth in subdivision (c) of this section.

(5) Applications may be made by an industrial development agency, subject to acceptance by the board, if the board determines the industrial development agency's application is feasible with microgrid technology.

(c) Review applicable criteria and recommendations. (1) The board shall review applications submitted under the takecharge New York power program. The board shall make an initial determination of whether the applicant is an eligible applicant. In the case of multiple eligible applicants or an industrial development agency making a single application, the board shall treat the cumulative application as a single application. In the case of an eligible applicant, the board may recommend to the authority that an allocation of a microgrid 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 overall energy usage to the applicant's overall cost of doing business, and the impact that a takecharge New York power allocation will have on the applicant's operating costs;

(ii) the extent to which a takecharge New York power benefit will result in new capital investment in the state by the applicant;

(iii) the extent to which a takecharge New York power benefit 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 a benefit;

(v) the applicant's payroll, salaries, benefits and number of jobs at the facility for which a takecharge New York power benefit is requested;

(vi) the number of jobs that will be created or retained within the state in relation to the requested takecharge New York power benefit, and the extent to which the applicant will agree to commit to creating or retaining such jobs as a condition to receiving a takecharge New York power benefit;

(vii) whether the applicant, due to the cost of energy, 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 takecharge New York benefit;

(viii) the significance of the applicant's facility that would receive the takecharge New York benefit to the economy of the area in which such facility is located;

(ix) will agree to place an equity amount, to be determined by the board, for the installation and maintenance of a microgrid and to be released upon reimbursement of the subsidy amount provided by the authority;

(x) 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 benefit is requested is located;

(xi) the minimum load requirements by the applicant; and

(xii) in addition to the foregoing criteria, the applicant must also agree to pay back the subsidy provided by the authority for microgrid development, under a timeline developed by the board.

(2) A recommendation by the board that the authority provide a takecharge New York power benefit in the form of a microgrid to an eligible applicant shall include, but need not be limited to:

(i) an effective initial term of the contract between the eligible applicant and the authority which shall not exceed the effective life of the microgrid;

(ii) provisions for effective periodic audits of the recipient of a benefit for the purpose of determining contract and program compliance, and for the partial or complete withdrawal of a benefit if the recipient fails to maintain mutually agreed upon commitments, relating to, among other things, employment levels, capital investments, and/or energy efficiency measures;

(iii) a requirement for an agreement by the recipient of a benefit to (A) undertake at its own expense an energy audit of its facilities at which it receives the benefit at least once during the term of the contract 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;

(iv) a requirement for an agreement between the recipient of an allocation and the authority for the installation of a microgrid and maintenance of such equipment for a period of years; and

(v) a requirement for an agreement by the recipient of a benefit 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 may base its recommendation on which eligible applicants it determines best meet the applicable criteria.

(4) 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.

(5) A recommendation for a takecharge New York power benefit 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.

(d) The authority shall, at a minimum, report quarterly to the board on the success of the takecharge New York benefits.

(e) For the purposes of this section, the authority shall own and maintain all microgrid infrastructure, and shall use its powers set forth in section one thousand five of the public authorities law to implement any microgrid infrastructure.

(f) (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 takecharge New York power program. Such evaluation shall focus on how the program has aided recipients of microgrid, and may include recommendations for how the program can be made more effective. Such evaluation shall be submitted by December thirty-first, two thousand nineteen 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.

(g) The authority shall have the power to effectuate all necessary regulations to carry out the intent and purpose of this chapter.

(h) Nothing in this section shall prohibit an applicant from also receiving power allocations under section one hundred eighty-eight-a of this article.

§ 3. This act shall take effect on the ninetieth day after it shall have become a law.