

STATE OF NEW YORK

9534

IN SENATE

May 16, 2024

Introduced by Sen. HINCHEY -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to establishing the Hudson Valley power authority, and providing for its powers and duties; to amend the public authorities law, in relation to the New York power authority; and to amend the not-for-profit corporation law, in relation to establishing energy observatory corporations

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

1 Section 1. Article 5 of the public authorities law is amended by
2 adding a new title 1-C to read as follows:

3 TITLE 1-C

4 HUDSON VALLEY POWER AUTHORITY

5 Section 1022. Short title.

6 1022-a. Definitions.

7 1022-b. Hudson Valley power authority.

8 1022-c. Hudson Valley power authority service area; extension of
9 service area.

10 1022-d. Powers and duties of the authority.

11 1022-e. Powers to provide and maintain generating, transmission
12 and resource recovery waste to energy facilities.

13 1022-f. Rate-setting procedures.

14 1022-g. Climate leadership and community protection act commit-
15 ment.

16 1022-h. Acquisition of property, including the exercise of the
17 power of eminent domain.

18 1022-i. Subsidiaries.

19 1022-j. Deposit and investment of moneys of the authority.

20 1022-k. Conflicts of interest.

21 1022-l. Sale of surplus power.

22 1022-m. Audit and annual reports.

23 1022-n. Bonds, notes and other obligations of the authority.

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

LBD15282-02-4

1 1022-o. State and municipalities not liable on bonds or notes or
2 other obligations.

3 1022-p. Agreement of the state.

4 1022-q. Exemption of the authority from taxation.

5 1022-r. Actions against the authority.

6 1022-s. Equal employment opportunity.

7 1022-t. Limitation of liability; indemnification.

8 1022-u. Public service law generally not applicable to the
9 authority; inconsistent provisions in certain other
10 acts superseded.

11 1022-v. Authority subject to certain provisions contained in the
12 state finance law, the public service law, the social
13 services law and the general municipal law.

14 1022-w. Website.

15 1022-x. Periodic review by the legislature.

16 1022-y. Hudson Valley power authority observatory.

17 1022-z. Severability.

18 § 1022. Short title. This title shall be known and may be cited as the
19 "Hudson Valley power authority act" or the HVPA act.

20 § 1022-a. Definitions. As used or referred to in this title, unless a
21 different meaning clearly appears from the context:

22 1. "Acquire" means, with respect to any right, title or interest in or
23 to any property, either the act of taking by the exercise of the power
24 of eminent domain, or the acquisition by purchase or otherwise.

25 2. "Act" means the Hudson Valley power authority act, being this
26 title.

27 3. "Authority" means the Hudson Valley power authority established by
28 section one thousand twenty-two-b of this title.

29 4. "Commission" means the public service commission.

30 5. "Comptroller" means the state comptroller.

31 6. "Utility corporation" means any private gas corporation, electric
32 corporation, or combined gas and electric corporation, as such terms are
33 defined in section two of the public service law, that has a portion of
34 its service territory within the service area. This shall not include
35 any municipality that provides gas or electric service.

36 7. "Federal government" means the United States of America and any
37 agency or instrumentality, corporate or otherwise, of the United States
38 of America.

39 8. "Final determination" or "finally determined" means a judicial
40 decision (a) by the highest court of competent jurisdiction, or (b) by a
41 court of competent jurisdiction from which no appeal has been taken and
42 the time within which to appeal has expired.

43 9. "Municipality" means any county, city, town, village, municipal
44 corporation, school district or other political subdivision of the
45 state, including any agency, authority or public corporation of the
46 state or any of the foregoing, or any combination thereof, other than
47 the authority.

48 10. "Property" means the power distribution system or systems of the
49 authority, whether completed facilities or projects in construction,
50 whether situated within or without the territorial limits of the service
51 area, including the plants, works, structures, poles, lines, conduits,
52 mains, systems, instrumentalities or parts thereof and appurtenances
53 thereto, lands, franchises and interest in land, including lands under
54 water and riparian rights, space rights and air rights, contract rights,
55 substations, and distribution facilities, or any other property inci-
56 dental to and included in such system or part thereof, and any improve-

1 ments, extensions or betterments. The term "property" shall also include
2 any and all interests in real property less than full title, such as
3 easements, rights of way, uses, leases, licenses and all other incorpo-
4 real hereditaments and every estate, interest or right, legal or equita-
5 ble, including terms for years and liens thereon by way of judgments,
6 mortgages or otherwise, and also all claims for damages related to such
7 real estate.

8 11. "Revenues" means all rates, rents, fees, charges, payments and
9 other income and receipts derived by the authority from the operation of
10 the properties of the authority other than the proceeds of the sales of
11 its securities, including, but not limited to, investment proceeds and
12 proceeds of insurance, condemnation, and sales or other disposition of
13 assets, together with all federal, state or municipal aid.

14 12. "Security" means any bond, note or other obligation issued by the
15 authority.

16 13. "State" means the state of New York.

17 14. "State agency" means any board, authority, agency, department,
18 commission, public corporation, body politic or instrumentality of the
19 state.

20 15. "Trustees" means the board of trustees of the authority.

21 16. "Relevant sectors" refers to the sectors that the HVPA will need
22 expertise from in order to succeed. They include environmental justice,
23 consumer protection, indigenous nation rights, community renewable ener-
24 gy, electrification, energy efficiency, workplace issues and local
25 government.

26 § 1022-b. Hudson Valley power authority. 1. A corporation known as the
27 Hudson Valley power authority is hereby established and charged with the
28 duties and having the powers provided in this title. The authority shall
29 be a state authority, a body corporate and politic constituting a public
30 benefit corporation, a political subdivision of the state, exercising
31 governmental and public powers, perpetual in duration, capable of suing
32 and being sued and having a seal, and which shall have the powers and
33 duties enumerated in this title, together with such others as may be
34 conferred upon it by law. The authority is not created or organized, and
35 its operations shall not be conducted, for the purpose of making a
36 profit. No part of the revenues or assets of the authority shall inure
37 to the benefit of or be distributable to its trustees or officers or any
38 other private persons, except as herein provided for actual services
39 rendered.

40 2. The board of the authority shall consist of nine trustees all of
41 whom shall be residents of the service area, two of whom shall be
42 appointed by the governor (trustees one and two), one of whom the gover-
43 nor shall designate as chair, two of whom shall be appointed by the
44 temporary president of the senate after consultation with the state
45 senator or senators representing the HVPA service area (trustees three
46 and four), two of whom shall be appointed by the speaker of the assembly
47 after consultation with the state assembly member or members represent-
48 ing the HVPA service area (trustees five and six), one of whom shall be
49 the HVPA observatory governing board chair (trustee seven), one of whom
50 shall be appointed by the HVPA observatory governing board (trustee
51 eight), and one of whom shall be the business manager of the Interna-
52 tional Brotherhood of Electrical Workers 320 representing the frontline
53 workers of the HVPA (trustee nine). Appointed trustees shall have exper-
54 tise in one of the relevant sectors mentioned in section one thousand
55 twenty-two-a of this article. Trustees shall serve staggered five-year
56 terms, except during the first term of appointments upon the effective

1 date of the chapter of the laws of two thousand twenty-four that added
2 this section. Trustees three and five shall be appointed for two years,
3 trustees seven and nine shall be appointed for three years, trustees one
4 and eight shall be appointed for four years, trustees two, four, and six
5 shall be appointed for five years. This will allow for staggered
6 appointments of at least two members each year after the first year,
7 thus ensuring a degree of continuity of committee membership.

8 3. The trustees shall serve without compensation but shall be entitled
9 to reimbursement of their actual and necessary expenses incurred in the
10 performance of their official duties, as may be authorized by the trus-
11 tees, in each case upon appropriate documentation by the submitting
12 trustee. No trustee or any entity, the majority of which is owned or
13 controlled by any trustee, shall receive any additional compensation
14 from the authority or be employed by the authority in any other capacity
15 by whatever means.

16 4. Five trustees shall constitute a quorum for the transaction of
17 business, and the affirmative vote of five trustees at a meeting shall
18 be necessary to the validity of any resolution, order or determination.
19 The trustees, in by-laws or by resolution, may allow for attendance at a
20 meeting of the trustees by speaker phone or any other electronic means
21 by which all meeting participants can hear one another.

22 5. The trustees shall appoint an executive committee of not less than
23 three trustees and shall delegate such duties and responsibilities of
24 the trustees to the executive committee as it may determine from time to
25 time, except that the trustees shall not delegate to the executive
26 committee the power to authorize the issuance of securities. The trus-
27 tees may appoint such additional committees with such duties and respon-
28 sibilities as they may determine from time to time.

29 6. (a) The trustees from time to time shall hire, without regard to
30 any personnel or civil service law, rule or regulation of the state,
31 such officers and employees, including a chief executive officer and
32 such engineering, management and legal officers, and other professional
33 employees, including but not limited to accounting, planning,
34 construction, marketing, finance, appraisal, banking and trustee
35 services, transmission and distribution, energy management, information
36 technology, cyber security, power supply, human resources, procurement,
37 treasury, energy efficiency, customer service and any other area of
38 utility operations as the trustees may require for the performance of
39 their duties and shall prescribe the duties and compensation of each
40 such officer and employee. Such compensation shall be reasonable and
41 commensurate to the duties of the position of such officer or employee.

42 (b) Any such employees hired, leased, or otherwise retained by the
43 authority or any of its subsidiaries as a consequence of an acquisition
44 of all the membership interests in, or assets of, the Central Hudson Gas
45 and Electric Corporation (hereinafter, "Central Hudson"), or any author-
46 ity subsidiary shall be hired subject to, and be entitled to, all appli-
47 cable provisions of (i) any existing contract or contracts with labor
48 unions representing Central Hudson employees, and (ii) all existing
49 pension, retirement, or other benefits provided to Central Hudson
50 employees under any existing collective bargaining agreement. Such
51 employees shall not be public employees or eligible to become members of
52 the New York state employees' retirement system on the basis of compen-
53 sation payable to them by the authority.

54 7. The authority shall not hire third-party service contractors to
55 conduct utility operations unless it has obtained written consent by the
56 labor unions representing Central Hudson workers.

1 8. (a) The authority shall not make any commitment, enter into any
2 agreement nor incur any indebtedness unless prior approval has been
3 received from the New York state public authorities control board pursu-
4 ant to article one-A of this chapter.

5 (b) In addition to all of the powers of the public service commission,
6 prior to acquiring any property and commencing operations, the authority
7 shall secure an order from the commission authorizing such acquisition
8 and commencement. The commission shall have the power to deny the
9 authority's application to acquire property and commence operations. The
10 authority shall comply with any and all requests for documents, materi-
11 als, and testimony that the commission may seek. The commission shall
12 consider, including but not limited to, the following factors before
13 issuing an order: ratepayer impacts; system reliability; environmental
14 impacts, conservation of energy resources; preservation or creation of
15 economic opportunities; power efficiency and availability; public health
16 and welfare; and any other factor it deems relevant. The authority
17 granted pursuant to this paragraph shall terminate upon commencement of
18 distribution of power.

19 9. The authority and its corporate existence shall continue until
20 terminated by law, provided, however, that no such law shall take effect
21 so long as the authority shall have securities outstanding, unless
22 adequate provision has been made for the payment thereof.

23 10. In the event that the authority does not commence delivering elec-
24 tric power within ten years of the effective date of this title, the
25 authority shall cease to exist and the provisions of this title shall be
26 of no further force and effect, subject to the terms of any bonds, notes
27 or other debt obligations then outstanding.

28 § 1022-c. Hudson Valley power authority service area; extension of
29 service area. 1. The service area of the Hudson Valley power authority
30 shall embrace the service territory of Central Hudson Gas and Electric
31 as of the date this act is signed into law.

32 2. The service area of the Hudson Valley power authority may be
33 extended at any time to include additional territory by the trustees in
34 accordance with the following procedure, provided however, the procedure
35 does not conflict with any rule or regulation of the public service
36 commission or any other law. Whenever the trustees determine that the
37 territory included within the service area should be extended, consist-
38 ent with the provisions of this title, the trustees shall adopt a resol-
39 ution proposing the additional territory. The trustees shall fix the
40 dates, hours and places for three public hearings before such trustees
41 upon the question of such extension and cause notice thereof and of the
42 additional territory to be included within the service area to be
43 published in two newspapers of general circulation in the county not
44 less than twenty nor more than thirty days before such date. At least
45 one of such hearings shall be held within the bounds of the proposed
46 additional territory. At such time the trustees shall hear all persons,
47 taxpayers or officials who may wish to be heard and shall finally deter-
48 mine the additional territory, if any, to be included in such extension.
49 Such determination shall be made by resolution of the trustees adopted
50 by a two-thirds vote of all trustees then in office. A map of the
51 service area, as extended, shall thereupon be filed in the office of the
52 county clerk of the affected counties.

53 § 1022-d. Powers and duties of the authority. The powers conferred by
54 this title shall be exercised by the trustees, subject to the terms of
55 this title. In the exercise of those powers, either directly or through
56 its officers and employees, the trustees may do the following things,

1 among others, and the following list of powers shall not be deemed
2 complete or exclusive, or to deny the existence of other powers, whether
3 similar or different, so long as they are reasonably necessary for
4 accomplishing the purposes declared and indicated in this title:

5 1. To make and alter by-laws for the regulation of its affairs and
6 conduct of its activities, to schedule annual, regular and special meet-
7 ings of the trustees, as the conduct of the business of the authority
8 may warrant, and to adopt and amend an official seal;

9 2. To develop, acquire, construct, reconstruct, rehabilitate and
10 improve facilities for the distribution of electric and gas power or any
11 connected service;

12 3. To determine the location, type, size, construction, lease,
13 purchase, ownership, acquisition, use and operation of any facilities or
14 other structure or property, within or without the service area;

15 4. To investigate, implement and integrate, to the fullest extent
16 practicable and economically feasible, such resource conservation and
17 energy efficiency measures and equipment intended to reduce power demand
18 and usage, utilize green technologies, alternative and renewable fuels,
19 net metering, crediting mechanisms for distributed energy resources and
20 demand response programs, all as integral elements in its investments in
21 new equipment for distribution of power, and in its marketing and sale
22 of electricity and gas to consumers;

23 5. To acquire on behalf of and in the name of the authority, whether
24 by agreement with and purchase from the owner or owners, or by arbi-
25 tration, or within the service area by eminent domain, pursuant to the
26 procedures set forth in the eminent domain procedure law, or by lease,
27 the whole or any part of any existing facilities or of any other proper-
28 ty to be used in connection with power distribution by the authority as
29 set out in this title; provided, however, that the authority shall not
30 acquire real property of a municipality or a political subdivision of
31 the state unless such municipality or political subdivision shall
32 consent thereto; and provided further that the authority shall not
33 acquire by the exercise of eminent domain any facilities for distrib-
34 ution operating at a voltage in excess of twenty-two thousand volts from
35 any person, corporation or association, public or private, engaged in
36 the business of distribution and sale of electricity and gas to ultimate
37 customers unless the authority is unable to acquire by contract with the
38 owners or operators thereof, the right to use such facilities on just,
39 reasonable and non-discriminatory terms. In the exercise of the power of
40 eminent domain, as provided in this subdivision, the property being
41 acquired shall be deemed, when so determined by the authority, to be for
42 a public use;

43 6. To create or acquire one or more wholly owned subsidiaries or
44 membership interests in subsidiaries in accordance with section one
45 thousand twenty-two-i of this title to carry out all or any part of the
46 purposes of this title;

47 7. To distribute electric and gas power and any connected services
48 within the service area, to fix progressive rates and charges for the
49 furnishing or rendition of electric and gas power or of any connected
50 service, and to collect revenues. Provided however, that prior to the
51 first sale of electric and gas power or any connected service, the
52 authority shall promulgate regulations granting to customers the
53 protections afforded by article two of the public service law and
54 section one hundred thirty-one-s of the social services law;

55 8. To maintain, operate and manage, and contract for the maintenance,
56 operation and management of properties of the authority;

1 9. To apply to the appropriate agencies and officials of the federal,
2 state and local governments for such licenses, permits or approvals for
3 its plans and projects as it may deem necessary or advisable, and upon
4 such terms and conditions as it may deem appropriate to accept, in its
5 discretion, such licenses, permits or approvals as may be tendered to it
6 by such agencies and officials;

7 10. To enter upon such lands, waters or premises as in the judgment of
8 the authority shall be necessary for the purpose of making surveys,
9 soundings, borings and examinations to accomplish any purpose authorized
10 by this title, the authority being liable only for actual damages done;

11 11. To enter into cooperative agreements with other authorities, muni-
12 cipalities, utility companies, individuals, firms or corporations, and
13 the dominion of Canada and its political subdivisions, for the intercon-
14 nection of facilities and the exchange or interchange of electric and
15 gas power or connected services, upon such terms and conditions as shall
16 be determined to be reasonable;

17 12. To execute contracts, borrow money, issue bonds, notes and other
18 obligations as provided in section one thousand twenty-two-j of this
19 title, and sell the same in such amounts and at such prices, interest
20 rates and other financial terms as may be determined by the trustees;

21 13. To enter into agreements to purchase power from the power authori-
22 ty of the state of New York, the state, any state agency, any munici-
23 pality, any private entity or any other available source at such price
24 or prices as may be negotiated, including the power to enter into any
25 agreement or any negotiation for the purchase of power from the dominion
26 of Canada, or any political subdivision, public authority or private
27 corporation therein;

28 14. To make any plans, studies or investigations which it may deem
29 necessary, convenient or desirable to enable it effectually to carry out
30 the provisions of this title;

31 15. To do whatever may be necessary to give effect to the purposes of
32 this title, and in general to have and exercise all other powers neces-
33 sary or incidental to the purposes of this title;

34 16. The trustees shall hold a monthly public meeting to discuss the
35 authority's business, including but not limited to proposed rates and
36 resource plans. Special meetings may be called by the chief executive
37 officer, by a majority of trustees, observatory, or by a petition signed
38 by not less than one-tenth of all the members. Monthly and special meet-
39 ings shall be held at the authority's headquarters. At monthly and
40 special meetings, members shall be allowed to attend in person or virtu-
41 ally and be given the opportunity to present their views through oral or
42 written statements;

43 17. To develop and manage a public distributed renewable energy (PDRE)
44 program that will plan, fund, and build distributed renewable energy
45 owned by the HVPA. The PDRE program will include community energy stor-
46 age (CES). Similarly, the HVPA will ensure ratepayers that own their own
47 distributed renewable energy are fairly rewarded for sending energy back
48 to the grid;

49 18. In regards to hiring workers to operate the HVPA's distribution
50 assets, the authority shall enter into a memorandum of understanding
51 with bona fide labor organizations of jurisdiction that is actively
52 engaged in representing transitioning employees from non-renewable
53 generation facilities. Such memorandum shall contain but not be limited
54 to safety and training standards, disaster response measures, guaranteed
55 hours, staffing levels, pay rate protection, and retraining programs.
56 The employees eligible for these positions shall first be selected from

1 a pool of transitioning workers who have lost their employment or will
2 be losing their employment in the non-renewable energy sector. Such a
3 list of potential employees will be provided by affected labor organiza-
4 tions and provided to the department of labor. If positions cannot be
5 filled by transitioning employees, workers who live in disadvantaged
6 communities with the service territory should then be prioritized,
7 followed by any worker who lives in the service territory;

8 19. In order to ensure a prevailing wage is paid, whenever the author-
9 ity enters into any contract, subcontract, lease, grant, bond, covenant
10 or other agreement for or in connection with any construction, demoli-
11 tion, reconstruction, excavation, rehabilitation, repair, renovation,
12 alteration, or improvement project, such project shall be deemed to be a
13 public works project for the purposes of article eight of the labor law,
14 and all of the provisions of article eight of the labor law shall be
15 applicable to all the work involved in the construction, demolition,
16 reconstruction, excavation, rehabilitation, repair, renovation, alter-
17 ation, or improvement of such project. Funds, financial assistance, or
18 any other benefits provided pursuant to this title shall not be utilized
19 for or in connection with the construction, demolition, reconstruction,
20 excavation, rehabilitation, repair, renovation, alteration, or improve-
21 ment of any project to which the provisions of article eight of the
22 labor law are not applicable; and

23 20. (a) For the protection of consumer health, safety and/or privacy
24 needs, it shall be the right of every consumer of the Hudson Valley
25 power authority, at no penalty, fee or service charge, to require their
26 electric corporation or gas corporation to replace an existing digital
27 utility meter at such consumer's premises that is assigned to such
28 consumer's account with an analog utility meter.

29 (b) The Hudson Valley power authority may not install a digital utili-
30 ty meter on a consumer's premises that is assigned to such consumer's
31 account unless it first shall provide written notice to the consumer no
32 less than ninety days prior to the scheduled installation of such meter,
33 so that such consumer may decline permission for such installation. Such
34 notice shall provide that:

35 (i) the consumer shall have the right to decline permission for the
36 Hudson Valley power authority from installing a digital utility meter
37 with no fee, penalty or service charge;

38 (ii) the consumer may, at any point in time following the installation
39 of a digital utility meter, require the removal of such device and its
40 replacement with an analog utility meter, with no fee, penalty or
41 service charge; and

42 (iii) the Hudson Valley power authority shall comply with such consum-
43 er's instructions within thirty days of receipt.

44 § 1022-e. Powers to provide and maintain generating, transmission and
45 resource recovery waste to energy facilities. Without limiting the
46 generality of the powers conferred upon the authority by section one
47 thousand twenty-two-d of this title, the authority shall have the
48 specific power:

49 1. Subject to the provisions of subdivision one of section one thou-
50 sand twenty-two-u of this title, to acquire, construct, improve, reha-
51 ilitate, maintain and operate such generating, transmission and related
52 facilities as the authority deems necessary or desirable to maintain an
53 adequate and dependable supply of gas and electric power within the
54 service area;

55 2. Subject to the provisions of subdivision one of section one thou-
56 sand twenty-two-u of this title, to acquire, construct, improve, reha-

1 bilitate, maintain and operate such hydroelectric or energy storage
2 projects within the state as it deems necessary or desirable to contrib-
3 ute to the adequacy, economy and reliability of the supply of electric
4 power and energy or to conserve fuel;

5 3. Subject to the provisions of subdivision one of section one thou-
6 sand twenty-two-u of this title, to determine the location, type, size,
7 construction, lease, purchase, ownership, acquisition, use and operation
8 of any generating, transmission or other related facility, provided,
9 however, that in making such determinations relating to electric power
10 facilities the authority shall give primary consideration to the
11 construction of energy efficient facilities, energy conservation, load
12 management programs, and cogeneration in the service area;

13 4. To proceed with the physical construction or completion of any
14 generating, transmission or related facility;

15 5. To apply to the appropriate agencies and officials of the federal
16 and state governments, for such licenses, permits or approval of its
17 plans or projects as it may deem necessary or advisable, and to accept
18 such licenses, permits or approvals as may be tendered to it by such
19 agencies or officials, upon such terms and conditions as it may deem
20 appropriate;

21 6. To institute suit, or to apply to any legislative body for legis-
22 lation, or to take such other action as it may deem necessary or advis-
23 able in the furtherance of the purposes of this title and for the
24 protection of its rights, if for any reason the authority shall fail to
25 secure any such license, permit or approval as it may deem necessary or
26 advisable;

27 7. To study means of maintaining the customer base in, and attracting
28 commerce and industry to the service area;

29 8. To implement programs and policies designed to provide for the
30 interconnection of: (i) (A) solar electric generating equipment owned or
31 operated by residential customers, (B) farm waste electric generating
32 equipment owned or operated by customer-generators, (C) solar electric
33 generating equipment owned or operated by non-residential customers, (D)
34 micro-combined heat and power generating equipment owned, leased or
35 operated by residential customers, (E) fuel cell electric generating
36 equipment owned, leased or operated by residential customers, and (F)
37 micro-hydroelectric generating equipment owned, leased or operated by
38 customer-generators and for net energy metering consistent with section
39 sixty-six-j of the public service law, to increase the efficiency of
40 energy end use, to shift demand from periods of high demand to periods
41 of low demand and to facilitate the development of cogeneration; and

42 (ii) wind electric generating equipment owned or operated by custom-
43 er-generators and for net energy metering consistent with section
44 sixty-six-l of the public service law;

45 9. To develop, with public participation, a comprehensive least-cost
46 plan which shall consider practical and economical use of conservation,
47 renewable resources, and cogeneration for providing service to its
48 customers;

49 10. To cooperate with and to enter into contractual arrangements with
50 private utility companies or public entities:

51 (i) with respect to the construction and operation of facilities by
52 the authority and the sale of all or part of the output therefrom;

53 (ii) with respect to the construction, completion, acquisition, owner-
54 ship and/or operation of generating facilities, fuel, docks, sidings,
55 loading or unloading equipment, storage facilities and other subsidiary

1 facilities and the disposition of the output of such generating facili-
2 ties; and

3 (iii) with respect to the construction, acquisition, ownership, opera-
4 tion and/or use of transmission facilities;

5 11. To cooperate with and to enter into contractual arrangements with
6 municipalities with respect to the construction, improvement, rehabili-
7 tation, ownership and/or operation of generating facilities;

8 12. To cooperate with and to enter into contractual arrangements with
9 the New York state energy research and development authority in
10 connection with the planning, siting, development, construction, opera-
11 tion and maintenance of generating facilities of the authority utilizing
12 new energy technologies;

13 13. Subject to the provisions of section one thousand twenty-two-k of
14 this title, to construct, maintain and operate resource recovery waste
15 to energy facilities;

16 14. All renewable energy generating projects subject to this subdivi-
17 sion shall be deemed public work and subject to and performed in accord-
18 ance with articles eight and nine of the labor law. Each contract for
19 such renewable energy generating project shall contain a provision that
20 such projects may only be undertaken pursuant to a project labor agree-
21 ment. For purposes of this section, "project labor agreement" shall
22 mean a pre-hire collective bargaining agreement between the authority,
23 or a third party on behalf of the authority, and a bona fide building
24 and construction trade labor organization establishing the labor organ-
25 ization as the collective bargaining representative for all persons who
26 will perform work on a public work project, and which provides that only
27 contractors and subcontractors who sign a pre-negotiated agreement with
28 the labor organization can perform project work. All contractors and
29 subcontractors associated with this work shall be required to utilize
30 apprenticeship agreements as defined by article twenty-three of the
31 labor law;

32 15. The authority shall include requirements in any procurement or
33 development of a renewable energy generating project, as defined in this
34 subdivision, that the components and parts shall be produced or made in
35 whole or substantial part in the United States, its territories or
36 possessions. The authority's president and chief executive officer, or
37 such chief executive officer's designee may waive the procurement and
38 development requirements set forth in this paragraph if such official
39 determines that: the requirements would not be in the public interest;
40 the requirements would result in unreasonable costs; obtaining such
41 infrastructure components and parts in the United States would increase
42 the cost of a renewable energy generating project by an unreasonable
43 amount; or such components or parts cannot be produced, made, or assem-
44 bled in the United States in sufficient and reasonably available quanti-
45 ties or of satisfactory quality. Such determination must be made on an
46 annual basis no later than December thirty-first, after providing notice
47 and an opportunity for public comment, and such determination shall be
48 made publicly available, in writing, on the authority's website with a
49 detailed explanation of the findings leading to such determination. If
50 the authority's president and chief executive officer, or designee, has
51 issued determinations for three consecutive years finding that no such
52 waiver is warranted pursuant to this paragraph, then the authority shall
53 no longer be required to provide the annual determination required by
54 this paragraph;

55 16. To enter into a memorandum of understanding for the operation and
56 maintenance of a renewable energy generating project developed pursuant

1 to this subdivision with a bona fide labor organization of jurisdiction
2 that is actively engaged in representing transitioning employees from
3 non-renewable generation facilities. Such memorandum shall be entered
4 into prior to the completion date of a renewable energy generating
5 project and shall be an ongoing material condition of authorization to
6 operate and maintain a renewable energy generating project developed
7 pursuant to this subdivision. The memorandum shall only apply to the
8 employees necessary for the maintenance and operation of such renewable
9 energy generating projects. Such memorandum shall contain but not be
10 limited to safety and training standards, disaster response measures,
11 guaranteed hours, staffing levels, pay rate protection, and retraining
12 programs. The employees eligible for these positions shall first be
13 selected from a pool of transitioning workers who have lost their
14 employment or will be losing their employment in the non-renewable ener-
15 gy generation sector. Such list of potential employees will be provided
16 by affected labor organizations and provided to the department of labor.
17 The department of labor shall update and provide such list to the
18 authority ninety days prior to purchase, acquisition, and/or
19 construction of any project under this subdivision.

20 17. For the purposes of article fifteen-A of the executive law, any
21 person entering into a contract for a project authorized pursuant to
22 this section shall be deemed a state agency as that term is defined in
23 such article and such contracts shall be deemed state contracts within
24 the meaning of that term as set forth in such article.

25 18. Nothing in this subdivision, shall be construed as exempting the
26 authority, its subsidiaries, or any renewable energy generating projects
27 undertaken pursuant to this section from the requirements of section
28 ninety-four-c of the executive law respecting any renewable energy
29 system developed by the authority or an authority subsidiary after the
30 effective date of this subdivision that meets the definition of "major
31 renewable energy facility" as defined in section ninety-four-c of the
32 executive law and section eight of part JJJ of chapter fifty-eight of
33 the laws of two thousand twenty, as it relates to host community bene-
34 fits, and section 11-0535-c of the environmental conservation law as it
35 relates to an endangered and threatened species mitigation bank fund.

36 § 1022-f. Rate-setting procedures. In periodically establishing and
37 revising rates, the trustees shall use the following procedures:

38 1. Notice of the proposed rates shall be published in the state regis-
39 ter with a statement of the justification and reasons supporting such
40 rates. Such notice shall include a date for a hearing in accordance
41 with subdivision two of this section.

42 2. One or more hearings shall be conducted as expeditiously as practi-
43 cable by a hearing officer to develop a full and complete record and to
44 receive public comment in the form of written and oral presentation of
45 views, data, questions, and argument related to such proposed rates. In
46 any such hearing:

47 (a) any person shall be provided an adequate opportunity by the hear-
48 ing officer to offer refutation or rebuttal of any material submitted by
49 any other person or the trustees, and

50 (b) the hearing officer, in such hearing officer's discretion, shall
51 allow a reasonable opportunity for cross examination, which, as deter-
52 mined by the hearing officer, is not dilatory, in order to develop
53 information and material relevant to any such proposed rate.

54 3. In addition to the opportunity to submit oral and written material
55 at the hearings, any written views, data, questions, and arguments

1 submitted by persons prior to, or before the close of, hearings shall be
2 made a part of the administrative record.

3 4. The HVPA shall use progressive green rates. The rates shall follow
4 set parameters for energy rates and charges based on energy usage.

5 (a) The HVPA's rates shall have increasing block rates, so that as
6 energy consumption increases, the marginal cost increases as well.

7 (b) The first block of residential energy use will be free, and it
8 should be set in such a way that the HVPA expects ten percent of elec-
9 tric customers shall not be charged in a given month and ten percent of
10 gas customers shall not be charged in a given month.

11 (c) Additional blocks shall be determined in the rate-making process.

12 (d) It shall be a goal of the HVPA that all residential customers be
13 adequately protected from bearing an energy burden greater than six
14 percent of their household income.

15 5. After such a hearing, the trustees in coordination with the observ-
16 atory may propose revised rates, publish such proposed rates in the
17 state register, and conduct additional hearings in accordance with this
18 section.

19 6. The trustees shall, in coordination with the observatory, make a
20 final decision establishing a rate or rates based on the record which
21 shall include the hearing transcript, together with exhibits, and such
22 other materials and information as may have been submitted to, or devel-
23 oped by, the trustees. The decision shall include a full and complete
24 justification of the final rates pursuant to this section.

25 7. The final decision of the trustees shall become effective on publi-
26 cation.

27 § 1022-g. Climate leadership and community protection act commitment.

28 1. At the outset, it is critical to enshrine climate goals into the
29 enabling legislation to ensure achieving the climate leadership and
30 community protection act's goals (CLCPA). In line with the CLCPA goals,
31 the HVPA shall:

32 (a) Procure seventy percent renewable electricity by two thousand
33 thirty, and one hundred percent renewable electricity by two thousand
34 forty, provided the supply is available;

35 (b) Ensure at least thirty-five percent of the benefits of clean ener-
36 gy and energy efficiency programs go to disadvantaged communities in its
37 service territory; and

38 (c) Conduct a study within two years of its creation to create a time-
39 line for the phaseout of its gas infrastructure.

40 2. The authority shall, to the extent it is eligible, apply for elec-
41 tive pay credit programs authorized or extended by the Inflation
42 Reduction Act of 2022, as established by Internal Revenue Service (IRS)
43 Rule 89 FR 17546. Prior to filing, the authority shall ensure that it
44 has:

45 (a) properly registered with the IRS;

46 (b) met the prevailing wage and apprenticeships set forth by the
47 Inflation Reduction Act; and

48 (c) qualified for the domestic content bonus credit amounts under
49 sections forty-five, forty-five-y, forty-eight, and forty-eight-e of the
50 Internal Revenue Code.

51 § 1022-h. Acquisition of property, including the exercise of the power
52 of eminent domain. 1. The legislature hereby expressly finds and deter-
53 mines:

54 (a) The acquisition by the authority, through purchase or the exercise
55 of the power of eminent domain, of either the securities or assets of a
56 utility corporation whichever is less expensive for the ratepayers, as

1 the authority may determine will be just to the ratepayers in the
2 service area, is the most appropriate means of dealing with the emergen-
3 cy involving the economy, health and safety of the residents and the
4 industry and commerce in the service area, notwithstanding the fact that
5 such utility corporation presently may be devoted to a public use, since
6 the public use of such property by the authority is hereby deemed to be
7 superior to the public use of such property by any other person, associ-
8 ation, or corporation.

9 (b) The authority, prior to exercising its power of eminent domain to
10 acquire the stock or assets of a utility corporation, shall enter into
11 negotiations with such utility corporation for the purpose of acquiring
12 such stock or assets upon such terms as the authority, in its sole
13 discretion, determines will result in average rates equal to or less
14 than the rates which would result if such utility corporation were to
15 continue in operation.

16 (c) The compensation paid by the authority to a utility corporation
17 shall be just to the ratepayers in the service area who must pay such
18 compensation.

19 (d) If the authority determines that it is the stock of a utility
20 corporation that should be taken, the proper measure of damages shall be
21 the fair market value thereof as evidenced by the price of such stock on
22 the exchange on which it is traded on the valuation date since there is
23 an established market for such stock that is reflective of its value. In
24 no event, however, shall consequential or severance damages be awarded
25 if control of such utility corporation shall have been taken by the
26 authority.

27 (e) If the authority determines that it is the assets of a utility
28 corporation that should be taken, fair market value would not constitute
29 just compensation to such utility corporation since there is an insuffi-
30 cient market in the usual sense for its assets to ascertain the value
31 thereof from the market. In determining the compensation payable for
32 such assets, there shall be taken into consideration the capitalization
33 of such utility corporation's expected future earnings.

34 (f) Neither consequential nor severance damages are proper if the
35 authority condemns all the assets of a utility corporation.

36 (g) Such an acquisition by the authority of the securities or assets
37 of a utility corporation serves the public purposes of assuring the
38 provision of an adequate supply of gas and electricity in a reliable,
39 efficient and economic manner and retaining existing commerce and indus-
40 try in and attracting new commerce and industry to the service area, all
41 of which are matters of state-wide concern.

42 2. In furtherance of the legislative findings and determinations set
43 forth in subdivision one of this section, the authority is hereby
44 authorized and empowered to acquire, through purchase or the exercise of
45 the power of eminent domain, all or any part of the securities or assets
46 of a utility corporation, as the authority in its sole discretion may
47 determine; provided, however, that prior to proceeding with any such
48 acquisition under this title, the board of trustees shall determine, in
49 its sole discretion based upon such engineering, financial and legal
50 data, studies and opinions as it may deem appropriate, that the average
51 rates projected to be charged after such acquisition and for such
52 reasonable period of time as the board of trustees may determine will
53 not be higher than the rates projected to be charged by such utility
54 corporation during such period if such acquisition had not occurred.

55 3. The authority also is authorized and empowered, in its discretion,
56 to make a tender offer or tender offers for all or any portion of the

1 securities of a utility corporation at such price or prices as the
2 authority may determine to be appropriate; provided, however that such
3 tender offer or tender offers, in the sole judgment of the authority,
4 will result in average rates less than the rates which would result from
5 continued operation by such utility corporation.

6 (a) The authority shall make such offer or offers or any adjustment
7 thereof prior to acquiring any such securities or any assets of a utili-
8 ty corporation through the exercise of the power of eminent domain. The
9 authority may pay for such securities in cash or by exchanging therefor
10 the authority's bonds or a combination thereof.

11 (b) In the case of a tender offer in which a subsidiary of the author-
12 ity acquires at least sixty-six and two-thirds percent of a utility
13 corporation's common stock, such subsidiary may merge with such utility
14 corporation and either continue in existence or dissolve, as it may
15 determine.

16 (c) The provisions of section five hundred thirteen and article
17 sixteen of the business corporation law and any other provisions of law
18 relating to procedures in a corporate takeover, including without limi-
19 tation chapter nine hundred fifteen of the laws of nineteen hundred
20 eighty-five, shall not be applicable to the actions of the authority
21 pursuant to this title.

22 (d) In determining whether acceptance of such a tender offer by the
23 authority is in the best interests of a utility corporation, the direc-
24 tors of such utility corporation shall consider not only the dollar
25 amount of such offer but the interests of employees, suppliers, ratepay-
26 ers, creditors (including holders of such utility corporation's debt
27 securities), and the economy of the service area and the state.

28 4. The authority, should it determine, in its sole discretion, to
29 acquire the stock or assets of a utility corporation by the exercise of
30 the power of eminent domain, shall not take title to nor possession of
31 such stock or assets prior to a final determination of the amount of
32 compensation to be paid for such stock or assets nor prior to a determi-
33 nation by the authority, in its sole discretion that the taking of such
34 stock or assets will result in average rates less than the rates which
35 would result from continued operation by such utility corporation.
36 Notwithstanding the provisions of the eminent domain procedure law, the
37 provisions of subdivisions five and six of this section shall apply to
38 the acquisition of the stock or property of such utility corporation by
39 the power of eminent domain, provided however, to the extent the
40 provisions herein do not supersede or conflict with the provisions of
41 such law the provisions of such law shall apply.

42 5. Procedure for acquisition of a utility corporation stock. (a) In
43 the event the authority determines to acquire the stock of a utility
44 corporation by the exercise of the power of eminent domain, having first
45 entered into negotiations with such utility corporation for the purchase
46 of such stock, the authority need not hold any public hearing on its
47 intention to condemn such stock or on the question of the public use of
48 such action, such finding having been made by the legislature herein.
49 The authority shall commence such acquisition by serving upon such util-
50 ity corporation and filing with the county clerk of the county in which
51 the principal office of such utility corporation is located a notice
52 describing the stock being acquired, the valuation date, as determined
53 by the authority, and such additional information as the authority may
54 reasonably deem necessary to facilitate the process of condemnation and
55 payment. The notice shall state that it is a notice of pendency of an
56 acquisition proceeding and that the authority will elect whether or not

1 to pay the amount of such award when it has been finally determined. The
2 authority also shall cause a copy of such notice: (i) to be served upon
3 the stock transfer agent or agents designated by such utility corpo-
4 ration for the transfer and registration of its stock; and (ii) to be
5 published in at least five successive issues of a daily newspaper of
6 national circulation.

7 (b) Upon receipt of such notice, the stock transfer agent or agents,
8 at the expense of the authority, shall forthwith serve upon each of the
9 registered owners of such stock a copy of such notice. Service shall be
10 deemed sufficient if mailed by certified or registered mail to the
11 address of each such owner as shown on a utility corporation's stock
12 transfer books. Service of the notice upon the stock transfer agent or
13 agents and its publication shall not be jurisdictional prerequisites to
14 the validity of the taking. Failure to notify any owner of stock to be
15 taken shall not invalidate any proceedings brought hereunder or any
16 title acquired by the authority.

17 (c) Upon filing of the notice described in paragraph (a) of this
18 subdivision, the authority shall petition a special term of the supreme
19 court in the judicial district in which such utility corporation has its
20 principal office for the acquisition of the stock. Such petition shall
21 be generally in the form prescribed by the eminent domain procedure law
22 so far as consistent herewith.

23 (d) The supreme court in the district in which such utility corpo-
24 ration has its principal office shall have exclusive jurisdiction to
25 hear and determine all claims arising from the acquisition of stock by
26 the exercise of the power of eminent domain and shall hear such claims
27 without a jury and without referral to a referee or commissioners.
28 Notwithstanding the provisions of section nine hundred one of the civil
29 practice law and rules, upon motion to the court by the authority, the
30 condemnation proceeding for the acquisition of stock shall be maintained
31 as a class action, pursuant to remaining provisions of article nine of
32 the civil practice law and rules, and the owners of the stock shall be
33 deemed a defendant class on the basis of the following express legisla-
34 tive findings:

35 (i) the class of such utility corporation stock owners is so numerous
36 that joinder of all members is impracticable;

37 (ii) the issue of valuation of such utility corporation stock is
38 common to all such utility corporation stock owners and there are ques-
39 tions of law or fact common to the members of such class which predomi-
40 nate over any questions affecting only individual members;

41 (iii) the claims or defenses, if any, of any representative owner of
42 such utility corporation stock to acquisition thereof by the authority
43 are typical of the claims or defenses of the class;

44 (iv) there are representative parties who will fairly and adequately
45 protect the interests of the class; and

46 (v) the prosecution of separate actions by or against individual
47 members of the class would create a risk of inconsistent or varying
48 adjudications with respect to the issue of valuation and other issues
49 common to the class.

50 (e) The procedure for determining just compensation shall be in the
51 manner prescribed by the eminent domain procedure law, except to the
52 extent such procedure is inconsistent with the provisions of this title,
53 in which case the provisions of this title shall control.

54 (f) Upon the entry of an award finally determining just compensation
55 for the stock, the authority shall have sixty days after receipt of
56 notice of entry of such award within which to elect to proceed with the

1 taking or to abandon such acquisition as provided in subdivision nine of
2 this subdivision. Notice of such election shall be served by the
3 authority and by the stock transfer agent in the manner described in
4 paragraph (a) of this subdivision. If the authority elects to proceed
5 with the acquisition, it shall deposit with the supreme court in which
6 the condemnation proceeding was held an amount equal to the award within
7 one hundred eighty days after receipt by the authority of notice of
8 entry of such award. Upon the making of such deposit, the authority
9 shall notify such utility corporation's stock transfer agent in writing
10 of such deposit. The sum so deposited shall be applied as provided in
11 the eminent domain procedure law. Upon making such deposit and giving
12 such notice to the stock transfer agent, title to all stock described in
13 the notice of taking shall immediately vest in the authority and the
14 authority shall have the immediate right thereto. In the event the
15 authority elects to abandon the acquisition, the provisions of subdivi-
16 sion nine of this section shall apply.

17 (g) It shall be a condition precedent to the payment of compensation
18 for any such securities that such securities be surrendered to the
19 supreme court or to such other entity, including the issuer's stock
20 transfer agent, as the supreme court may direct.

21 6. Procedure for acquisition of a utility corporation's assets. (a) If
22 the authority shall find it necessary or convenient to acquire any real
23 or personal property of such utility corporation, other than securities,
24 whether for immediate or future use, then the authority need not deter-
25 mine that such property is required for public use, since the legisla-
26 ture already has made such determination in this title which determi-
27 nation shall be binding for all purposes. The authority need not publish
28 any notice of its intention to acquire such property or hold any public
29 hearing with respect thereto or to the public use of such action.

30 (b) When any real property of such utility corporation within this
31 state is sought to be acquired by the exercise of the power of eminent
32 domain, and after the authority shall have entered into negotiations
33 with such utility corporation for the purchase of such property, the
34 authority shall cause a survey and map to be made thereof and shall
35 cause such survey and map to be filed in its office and in the office of
36 the county clerk in which such property is located. There shall be
37 annexed to such survey and map a certificate executed by the chief engi-
38 neer of the authority, or by such other officer or employee as may be
39 designated by the board of trustees, stating that the property or inter-
40 est therein described in such survey and map is necessary for its
41 purposes.

42 (c) Upon filing such survey and map, the authority shall petition a
43 special term of the supreme court in the judicial district in which the
44 property is located for the acquisition of such property or interest
45 therein. Such petition shall describe the property being acquired, the
46 valuation date, as determined by the authority, and such additional
47 information as the authority may reasonably deem necessary to facilitate
48 the process of condemnation and payment. The petition shall state that
49 the authority will elect whether or not to pay the amount of such award
50 when it has been finally determined. In all other respects, such peti-
51 tion shall be generally in the form prescribed by the eminent domain
52 procedure law, so far as consistent herewith. Such petition, together
53 with a notice of pendency of the proceeding, shall be filed in the
54 office of the county clerk of the county in which the property is
55 located and shall be indexed and recorded as provided by law. A copy of
56 such petition, together with a notice of the presentation thereof to

1 such special term of the supreme court, shall be served upon the owners
2 of such property as provided in the eminent domain procedure law. The
3 authority may cause a duplicate original affidavit of the service there-
4 of to be recorded in the books used for recording deeds in the office of
5 the county clerk of the county in which the property described in such
6 notice is located, and the recording of such affidavit shall be prima
7 facie evidence of due service thereof.

8 (d) Subsequent proceedings shall be conducted generally in the manner
9 prescribed by the eminent domain procedure law except to the extent the
10 provisions thereof are inconsistent with the provisions of this title,
11 in which case the provisions of this title shall control.

12 (e) Notwithstanding any provision of the eminent domain procedure law
13 to the contrary, in any proceeding brought by the authority to condemn
14 real property pursuant to such law, title shall vest in the authority
15 and compensation shall be paid only upon: (i) a decision by the supreme
16 court that compensation for the real property condemned shall be deter-
17 mined solely by the income capitalization method of valuation based on
18 the actual net income as allowed by the public service commission; and
19 (ii) such supreme court's determination that the amount of such compen-
20 sation shall be based on the income capitalization method, entry of a
21 final judgment, the filing of the final decree and the conclusion of any
22 appeal or the expiration of the time to file an appeal related to the
23 condemnation proceeding. If any court shall utilize any method of
24 compensation other than the income capitalization method, or if the
25 proposed compensation is more than the rate base of the assets taken in
26 condemnation, as utilized by the public service commission in setting
27 rates and as certified by such commission, then the authority may with-
28 draw the condemnation proceeding without prejudice or costs to any
29 party.

30 (f) Should a utility corporation's property be taken by the exercise
31 of the power of eminent domain and if such utility corporation shall
32 have agreed upon the compensation to be paid therefor in settlement of
33 the proceeding, if, such utility corporation shall be entitled to
34 payment of the agreed or awarded compensation within one hundred eighty
35 days after the date of the agreement upon the amount of the compensation
36 or of the entry of the award, together with interest upon the amount of
37 such compensation from the time of acquisition thereof by the authority
38 to the date of payment of such compensation; but such interest shall
39 cease upon the service by the authority, upon the person or corporation
40 entitled thereto, of a fifteen days' notice that the authority is ready
41 and willing to pay the amount of such compensation upon the presentation
42 of proper proofs and vouchers. Such notice shall be served personally or
43 by registered mail and publication thereof shall be made at least once a
44 week for three successive weeks in a daily newspaper of general circu-
45 lation in the county in which such property or any part thereof is
46 located.

47 (g) Upon the entry of an award finally determining just compensation
48 for the property of such utility corporation, the authority shall have
49 sixty days after receipt of notice of entry of such award within which
50 to elect to proceed with the taking or to abandon such acquisition as
51 provided in subdivision nine of this section. Notice of such election
52 shall be served by the authority on the owners of such property in the
53 manner described in paragraph (c) of this subdivision. If the authority
54 elects to proceed with the acquisition, it shall deposit with the
55 supreme court in which the condemnation proceeding was held an amount
56 equal to the award within one hundred eighty days after receipt by the

1 authority of notice of entry of such award. Upon the making of such
2 deposit, the authority shall notify such utility corporation in writing
3 of such deposit. The sum so deposited shall be applied as provided in
4 the eminent domain procedure law. Upon making such deposit and giving
5 such notice to such utility corporation, title to all property described
6 in the notice of taking shall immediately vest in the authority and the
7 authority shall have the immediate right thereto. The order setting
8 forth the award, together with evidence from the clerk of the court of
9 receipt of the amount of the award, shall be filed in the office of the
10 county clerk of the county in which the property is located and shall be
11 indexed and recorded in the same manner as a notice of pendency under
12 the eminent domain procedure law. The owner or person in possession of
13 such property shall deliver possession thereof to the authority upon
14 demand, and in case possession is not delivered when demanded or demand
15 is not convenient because of absence of the owner or inability to locate
16 or determine the owner, the authority may apply to the court without
17 notice for an order requiring the sheriff to put it into possession of
18 such real property. Such an order shall be executed as if it were an
19 execution for the delivery of the possession of the property. In the
20 event the authority elects to abandon the acquisition, the provisions of
21 subdivision nine of this section shall apply.

22 7. At any time the authority and its duly authorized agents and
23 employees may, on reasonable notice and during business hours, (a) enter
24 upon any real property proposed to be acquired for the purpose of making
25 the surveys or maps mentioned in this section, or of making such other
26 surveys, inspections or examinations of real and personal property and
27 (b) inspect and make copies of the books and records of the issuer of
28 such securities, all as the authority may deem necessary or convenient
29 for the purposes of this title.

30 8. Upon the acquisition of all the outstanding shares of stock of a
31 corporate issuer representing all the voting rights and equity thereof,
32 the authority shall as soon as reasonably practicable take all steps
33 necessary to ensure that the rights and claims of all the holders of any
34 other stock and debt securities and all other creditors thereof are as
35 secure as they were immediately prior to the acquisition by the authori-
36 ty. Nothing herein shall prohibit the authority from taking any appro-
37 priate and prudent action to renegotiate and restructure such debt or
38 from purchasing the preferred stock and debt securities issued by such
39 corporation at such prices as the authority may determine. The authority
40 may also exchange its bonds for any outstanding preferred stock or debt
41 securities with the consent of the holders of such preferred stock or
42 debt securities.

43 9. If the authority determines, in its sole discretion, that the total
44 cost of acquisition will result in average rates in excess of the rates
45 which would result from continued operation by such utility corporation,
46 the authority shall abandon the acquisition. In such event, the authori-
47 ty shall serve notice of such abandonment (a) in the case of a stock
48 acquisition, by causing to be mailed by certified or registered mail a
49 copy of such notice to each former owner of stock as shown on such util-
50 ity corporation's stock transfer books immediately prior to such acqui-
51 sition at the address shown on such stock transfer books and by causing
52 to be published a copy of such notice in at least five successive issues
53 of a daily newspaper of national circulation or (b) in the case of an
54 asset acquisition, in the same manner as provided for the service of a
55 petition for acquisition in paragraph (c) of subdivision six of this
56 section. In addition, in the case of an asset acquisition the authority

1 shall file a copy of the notice of abandonment with the county clerk of
2 the county in which is located any real property that was taken and with
3 the clerk of the supreme court in which the proceeding was instituted.

4 § 1022-i. Subsidiaries. 1. The authority shall have the right to exer-
5 cise and perform all or part of its powers and functions through one or
6 more wholly owned subsidiaries by operating as the sole member thereof,
7 acquiring the voting shares or membership interests thereof, or by
8 resolution of the board directing any of its trustees, officers or
9 employees to organize a subsidiary pursuant to the business corporation
10 law, the not-for-profit corporation law, the limited liability company
11 law, or the transportation corporations law. Such resolution shall
12 prescribe the purpose for which such subsidiary is to be formed.

13 2. The authority may transfer to any subsidiary any moneys, property
14 (real, personal or mixed) or facilities in order to carry out the
15 purposes of this title. Each such subsidiary shall have all the privi-
16 leges, immunities, tax exemptions and other exemptions of the authority
17 to the extent the same are not inconsistent with the statute or statutes
18 pursuant to which such subsidiary was established provided, however,
19 that in any event any such subsidiary shall be entitled to exemptions
20 from the public service law and any regulation by, or the jurisdiction
21 of, the public service commission, and the state environmental quality
22 review act to the extent provided in subdivision two of section one
23 thousand twenty-two-u of this title.

24 3. When the authority acquires either directly or through a subsidiary
25 the private entity known as Central Hudson, the authority shall maintain
26 the employment of the Central Hudson employees who are subject to the
27 terms of any existing contract or contracts with any labor union, and
28 shall assume such labor contracts. Upon acquisition of Central Hudson by
29 the authority, such employees shall:

30 (a) continue to be treated as private sector employees subject to the
31 national labor relations act and exempt from the New York state public
32 employees fair employment act;

33 (b) not acquire civil service status;

34 (c) be entitled to continue to receive such salary and benefits as
35 said employees receive as provided in the existing labor union contracts
36 as of the date of the authority's acquisition of any membership interest
37 in Central Hudson;

38 (d) be entitled to all provisions of any existing contract or
39 contracts with labor unions; and

40 (e) have pension and other benefits, including retirement benefits,
41 continued in plans that are operated and administered in compliance with
42 the employee retirement income security act of 1974, as amended (herein-
43 after "ERISA"), and the internal revenue code, to the fullest extent
44 allowed by law. After acquisition of Central Hudson by the authority,
45 the authority shall have an obligation to bargain in good faith with the
46 collective bargaining representative of such employees pursuant to the
47 national labor relations act. The authority may, in its discretion,
48 utilize the services of a professional employer organization (PEO) as
49 defined in section nine hundred sixteen of the labor law to maintain the
50 employment and working conditions of the Central Hudson employees
51 consistent with the requirements of this subdivision. Notwithstanding
52 any provision of law which may or could be deemed to the contrary, such
53 acquisition of Central Hudson by or for the authority and/or authority
54 subsidiary, and the rights, obligations and undertakings of the authori-
55 ty in connection therewith as hereinabove set forth, are hereby declared
56 to be in furtherance of the authority's proprietary, marketplace func-

1 tion of providing a safer, more efficient, reliable, and economical
2 supply of electrical and gas energy within the service area, which will
3 realize savings for the ratepayers and taxpayers in the service area and
4 further protect the interests of ratepayers and the economy in the
5 service area.

6 § 1022-j. Deposit and investment of moneys of the authority. 1. All
7 moneys of the authority, from whatever source derived, except as other-
8 wise authorized or provided in this title, shall upon receipt be depos-
9 ited forthwith in a bank or banks designated by the trustees, to be
10 selected in accordance with such standards as the trustees shall set
11 forth in the by-laws or investment guidelines of the authority, which
12 standards shall take into account the creditworthiness and capital posi-
13 tion of the depository bank or banks. The moneys in such accounts may be
14 invested in obligations of the state or the United States, or guaranteed
15 by either in accordance with practices that the trustees shall set forth
16 in the by-laws or investment guidelines of the authority. The moneys in
17 such accounts shall be withdrawn on the order of such person or persons
18 as the directors shall authorize in the by-laws of the authority and
19 shall be applied to the use of the authority as the trustees shall
20 authorize in the by-laws of the authority. All deposits of such moneys
21 shall be secured in accordance with section twenty-nine hundred twenty-
22 five of this chapter. The state comptroller and such comptroller's
23 legally authorized representatives are authorized and empowered from
24 time to time to examine the accounts and books of the authority, includ-
25 ing its receipts, disbursements, contracts, leases, sinking funds,
26 investments and any other records and papers relating to its financial
27 standing; the authority shall not be required to pay a fee for any such
28 examination.

29 2. The authority shall have power to contract with holders of any of
30 its bonds or notes or other obligations, or any trustee therefor, as to
31 the custody, collection, securing, investment and payment of any moneys
32 of the authority and of any moneys held in trust or otherwise for the
33 payment of bonds or notes or other obligations, and to carry out any
34 such contract. Moneys held in trust or otherwise for the payment of
35 bonds or notes or other obligations or in any way to secure bonds or
36 notes or obligations and deposits of such moneys shall be secured in
37 full in direct obligations of the federal government the payment of
38 which is guaranteed by the United States of America. Such investments
39 shall be held on deposit only in banks having a minimum credit rating
40 and a minimum accumulated capital, as the trustees shall specify in the
41 by-laws or investment guidelines of the authority.

42 3. Subject to agreements with noteholders and bondholders or any trustee
43 therefor, the authority shall prescribe a uniform system of accounts
44 in accordance with generally accepted accounting principles.

45 4. The trustees shall adopt investment guidelines and standards to
46 implement the foregoing provisions of this section, which guidelines and
47 standards shall be reviewed annually by the trustees and shall be made
48 available to state and municipal officials and to the public.

49 5. The Hudson Valley power authority is a public entity and the
50 management of its financial resources shall be conducted by a bank that
51 is accountable to the public in ways that are not possible with private
52 financial institutions. Subsequent to the passage of the "New York
53 public banking act" or similar legislation to allow for the creation of
54 local public banks and the chartering of a public bank in the service
55 territory, the Hudson Valley power authority shall transfer all finan-

1 cial assets into accounts held by such an institution as soon as is
2 practicable.

3 § 1022-k. Conflicts of interest. Eligibility for appointment as a
4 trustee, officer or employee of the authority shall be subject to the
5 provisions of section twenty-eight hundred twenty-five of this chapter.
6 In addition to the requirements of such section:

7 1. If any trustee, officer or employee of the authority shall have an
8 interest, either direct or indirect, in any contract to which the
9 authority is or is to be a party, such interest shall be disclosed to
10 the authority in writing and shall be set forth in the minutes of the
11 authority. The trustee, officer or employee having such interest shall
12 not participate in any action by the authority with respect to such
13 contract.

14 2. No trustee, officer or employee of the authority shall be deemed to
15 have such an interest solely by reason of the ownership of two percent
16 or less of the securities of a corporation which is or is to be a party
17 to a contract with the authority, including without limitation the hold-
18 ing company of any banking institution in which the funds of the author-
19 ity are, or are to be deposited, or which is or is to be acting as trustee
20 or paying agent under any bond or note resolution, trust indenture
21 or similar instrument to which the authority is a party.

22 3. Nothing in this section shall be deemed or construed to limit the
23 right of any trustee, officer or employee of the authority to acquire an
24 interest in the securities of the authority.

25 § 1022-l. Sale of surplus power. Whenever any electric power which the
26 authority may acquire creates a surplus over the amount of electric
27 power required by the residents of the service area, the authority may
28 sell such surplus in territory outside the service area to persons, or
29 public or private corporations. In acquiring any facility or property
30 which also serves any municipality or territory outside the service
31 area, the authority, if it deems it advantageous and economical so to
32 do, may, with the consent of the trustees, serve any such municipality
33 or territory or sell electric power to persons, or public or private
34 corporations in such territory or to such municipality.

35 § 1022-m. Audit and annual reports. 1. The accounts of the authority
36 shall be subject to the supervision of the comptroller and an annual
37 audit shall be performed by an independent certified public accountant
38 selected by the trustees and shall be made available to the municipi-
39 palities served by the authority and to the public.

40 2. The authority shall submit a detailed annual report pursuant to and
41 as specified in section twenty-eight hundred of this chapter, and a copy
42 of such report shall be filed with the county executives of the counties
43 within the service area, and with the mayors and supervisors of the
44 municipalities within the service area and shall be made available to
45 the municipalities served by the authority and to the public. Nothing in
46 this section shall be deemed to exempt the authority from any rule or
47 regulation, including the public authorities law.

48 § 1022-n. Bonds, notes and other obligations of the authority. 1. The
49 authority shall have power and is hereby authorized from time to time to
50 issue its bonds, notes or other obligations for the purpose of financing
51 any capital project authorized by this title, including but not limited
52 to, the acquisition of any real or personal property or facilities
53 deemed necessary by the authority, development and professional
54 expenses, and funding any capital or other reserve funds established in
55 connection with the authority's operations or issuances, in such princi-
56 pal amount as the trustees shall determine necessary to perform its

1 corporate duties and further its purposes as authorized in this title.
2 The maximum maturity of any such bond shall not exceed thirty years from
3 its date of issuance. The maximum maturity of any such note or other
4 obligation shall not exceed five years from its date of issuance.

5 2. Except as may be otherwise expressly provided by the authority, the
6 issuance of bonds, notes or other obligations, shall be general obli-
7 gations of the authority payable out of any moneys or revenues of the
8 authority, subject only to any agreements with the holders of particular
9 bonds, notes or other obligations pledging any particular moneys or
10 revenues.

11 3. The authority shall have power from time to time, whenever it deems
12 refunding expedient, to refund any bonds, notes or other obligations by
13 the issuance of new bonds, notes or other obligations, whether the
14 bonds, notes or other obligations to be refunded have or have not
15 matured, and may issue bonds, notes or other obligations partly to
16 refund bonds, notes or other obligations then outstanding and partly for
17 any other purpose described in this section. Refunding bonds, notes or
18 other obligations may be exchanged for the bonds, notes or other obli-
19 gations to be refunded, with such cash adjustments as may be agreed, or
20 may be sold with the proceeds applied to the purchase or payment of the
21 bonds to be refunded.

22 4. Bonds may be issued either in a series with multiple discrete matu-
23 rity dates or as term bonds with a single maturity date. The bonds,
24 notes or other obligations shall be authorized by resolution of the
25 trustees and shall bear such date or dates, mature at such time or
26 times, bear interest at such rate or rates, payable annually or semi-an-
27 nually, be in such denominations, be in such form, carry such registra-
28 tion privileges, be executed in such manner, be payable in lawful money
29 of the United States of America at such place or places, and be subject
30 to such terms of redemption, as such resolution or resolutions may
31 provide. In the event that term bonds, notes or other obligations are
32 issued, the resolution authorizing the same may make such provisions for
33 the establishment and management of adequate sinking funds for the
34 payment thereof, as the authority may deem necessary.

35 5. The bonds, notes or other obligations of the authority may be sold
36 at public or private sale for such price or prices as the authority
37 shall determine. For a private sale of its securities, the authority
38 shall obtain the written approval of the terms of such sale from the
39 comptroller if such sale is to a party other than the comptroller, or
40 from the director of the budget where such sale is to the comptroller,
41 in either case prior to closing the issuance transaction.

42 6. Any resolution authorizing any issuance of bonds, notes or other
43 obligations may contain provisions, which shall be a part of the
44 contract between the authority and the holders of the issued securities,
45 as to:

46 (a) pledging all or any part of the revenues of the authority or its
47 projects or any revenue producing contract or contracts made by the
48 authority with any individual, partnership, limited liability company,
49 corporation or association to secure the payment of the bonds, notes or
50 other obligations, subject to such agreements with holders of securities
51 of the authority;

52 (b) pledging, assigning or creating a lien on all or any part of
53 assets of the authority, including mortgages and obligations security
54 mortgages, to secure the payment of the bonds, subject to such agree-
55 ments with holders of securities of the authority;

1 (c) the setting aside of reserves or sinking funds, and the regulation
2 and disposition thereof;

3 (d) establishment of special funds for deposit of moneys received from
4 the proceeds of the issuance of securities as the trustees shall deter-
5 mine, consistent with the authorizing resolution and the provisions of
6 this title;

7 (e) limitations on the purpose to which the proceeds of sale of any
8 issuance of bonds, notes or other obligations then or thereafter to be
9 issued may be applied and pledging such proceeds to secure the payment
10 of the bonds, notes or other obligations;

11 (f) limitations of the issuance of additional bonds, notes or other
12 obligations; the terms upon which additional bonds, notes or other obli-
13 gations may be issued and secured; and the refunding of outstanding
14 bonds, notes or other obligations;

15 (g) the procedure, if any, by which the terms of any contract with
16 bondholders may be amended or abrogated, the amount of bonds the holders
17 of which must consent thereto, and the manner in which such consent may
18 be given;

19 (h) providing for the appointment and powers of a trustee for holders
20 of securities, and the rights, powers and duties of such trustee as the
21 directors may determine;

22 (i) limitations on the amount of moneys derived from a project to be
23 expended for operating, administrative or other expenses of the authori-
24 ty;

25 (j) defining the acts or omissions to act which shall constitute a
26 default in the duties of the authority to holders of its obligations and
27 providing the rights and remedies of such holders in the event of a
28 default, provided, however, that such rights and remedies shall not be
29 inconsistent with the laws of the state and any other provisions of this
30 title; and provided, further, however, that nothing contained in this
31 title shall be deemed to restrict the right of the state or of any muni-
32 cipality to amend, modify or otherwise alter statutes, local laws, ordi-
33 nanances, resolutions or agreements imposing or relating to taxes or fees
34 or appropriations relating thereto; and there shall not be included in
35 any resolution or contract or agreement with the holders of the bonds,
36 notes or other obligations authorized by this title any provision which
37 provides that a default shall occur as a result of the state or of a
38 municipality exercising its right to amend, modify or otherwise alter
39 laws, ordinances, resolutions or agreements imposing or relating to
40 taxes or fees or appropriations relating thereto; and

41 (k) any other provisions not inconsistent with those enumerated in
42 this subdivision and necessary to effect its issuances of bonds, notes
43 or other obligations and the rights of the holders of its securities, or
44 otherwise in furtherance of its corporate purposes.

45 7. Notwithstanding any other provision of this title, any such resol-
46 ution or resolutions shall contain a covenant by the authority that it
47 will at all times maintain rates, fees or charges sufficient to pay, and
48 that any contracts entered into by the authority for the sale or
49 distribution of power shall contain rates, fees or charges sufficient to
50 pay the costs of operation and maintenance of the project, the principal
51 of and interest on any obligations issued pursuant to such resolution as
52 the same severally become due and payable, and to maintain any debt
53 service coverage ratios and any reserves required by the terms of such
54 resolution or resolutions. Provided however, that the total rates, fees,
55 and charges shall not exceed the prevailing electric and gas rate in the
56 service area. The prevailing electric and gas rate in the service area

1 shall mean the average of the total rates, fees, and charges paid by
2 former customers of the utility corporation that served such customers.

3 8. It is the intent of this title that any pledge of revenues or other
4 moneys or of a revenue producing contract or contracts made by the
5 authority shall be valid and binding from the time when the pledge is
6 made; that the revenues or other moneys or proceeds of any contract or
7 contracts so pledged and thereafter received by the authority shall
8 immediately be subject to the lien of such pledge without any physical
9 delivery thereof or further act; and that the lien of any such pledge
10 shall be valid and binding as against all parties having claims of any
11 kind in tort, contract or otherwise against the authority irrespective
12 of whether such parties have notice thereof. Neither the resolution nor
13 any other instrument by which a pledge is created need be recorded.

14 9. Neither the trustees of the authority nor any person executing the
15 bonds, notes or other obligations shall be liable personally on the
16 bonds, notes or other obligations or be subject to any personal liabil-
17 ity or accountability by reason of the issuance thereof.

18 10. The authority shall have the power out of any funds available
19 therefor to purchase bonds, notes or other obligations. The authority
20 may hold, pledge, cancel or resell such bonds, notes or other obli-
21 gations, subject to and in accordance with agreements with bondholders.

22 11. Any bonds, notes or other obligations issued by the authority are
23 hereby made securities in which all public officers and bodies of this
24 state and all municipalities and municipal subdivisions, all insurance
25 companies and associations and other persons carrying on an insurance
26 business, all banks, bankers, trust companies, savings banks and savings
27 associations, including savings and loan associations, building and loan
28 associations, investment companies and other persons carrying on a bank-
29 ing business, and all other persons whatsoever who are authorized to
30 invest in bonds, notes or other obligations of the state, may properly
31 and legally invest funds including capital in their control or belonging
32 to them; subject to the provisions of any other general or special law
33 to the contrary.

34 12. The authority is authorized to obtain from any department or agen-
35 cy of the United States of America or the state or any nongovernmental
36 insurer or financial institution any insurance, guaranty or other credit
37 support device, to the extent available, as to, or for the payment or
38 repayment of interest or principal, or both, or any part thereof, on any
39 bonds, notes or other obligations issued by the authority and to enter
40 into any agreement or contract with respect to any such insurance or
41 guaranty, except to the extent that the same would in any way impair or
42 interfere with the ability of the authority to perform and fulfill the
43 terms of any agreement made with the holders of outstanding bonds, notes
44 or other obligations of the authority.

45 13. In addition to the powers conferred in this section upon the
46 authority to secure its bonds, notes or other obligations, the authority
47 shall have the power in connection with the issuance of bonds, notes or
48 other obligations to enter into such agreements as the authority may
49 deem necessary, convenient or desirable concerning the use or disposi-
50 tion of its revenues or other moneys or property, and for the acquisi-
51 tion, alteration or disposition of its property, real and personal,
52 including the mortgaging of any of its properties and the entrusting,
53 pledging or creation of any other security interest in any such reven-
54 ues, moneys or properties and the doing of any act, including refraining
55 from doing any act, which the authority would have the right to do in
56 the absence of such agreements. The authority shall have the power to

1 enter into amendments of any such agreements within the powers granted
2 to the authority by this title and to perform such agreements. The
3 provisions of any such agreements may be made a part of the contract
4 with the holders of bonds, notes or other obligations of the authority.

5 14. All bonds, notes and other obligations issued by the authority
6 under the provisions of this title are hereby declared to have all the
7 qualities and incidents of negotiable instruments under the applicable
8 laws of the state.

9 § 1022-o. State and municipalities not liable on bonds or notes or
10 other obligations. The securities of the authority shall not be a debt
11 of the state or of any municipality, and neither the state nor any muni-
12 cipality shall be liable thereon. The authority shall not have the power
13 to pledge or restrict the credit, the revenues or the taxing power of
14 the state or of any municipality, and neither the credit, the revenues
15 nor the taxing power of the state or of any municipality shall be or
16 shall be deemed to be pledged to the payment of any securities of the
17 authority. Each evidence of indebtedness of the authority, including the
18 securities of the authority, shall contain a clear and explicit state-
19 ment of the provisions of this section. Nothing in this title shall be
20 deemed to obligate the state or any municipality to make any payments or
21 impose any taxes to satisfy the debt service obligations of the authori-
22 ty.

23 § 1022-p. Agreement of the state. The state does hereby pledge to and
24 agree with the holders of any bonds, notes or other obligations issued
25 by the authority under this title, that the state will not limit or
26 alter the rights hereby vested in the authority to establish and collect
27 the revenues and other charges referred to in this title and to fulfill
28 the terms of any agreements made with or for the benefit of the holders
29 of the securities, or in any way impair the rights and remedies of the
30 bondholders until such securities are fully met and discharged. The
31 authority is authorized to include this pledge of the state in all
32 agreements by the authority with the holders of its securities. Nothing
33 contained in this title shall be deemed to restrict any right of the
34 state or municipality to amend, modify, repeal or otherwise alter stat-
35 utes imposing or relating to taxes or fees, or appropriations relating
36 thereto. The authority shall not include within any resolution, contract
37 or agreement with holders of the bonds, notes or other obligations
38 issued under this article any provision which provides that a default
39 occurs as a result of the state or of a municipality exercising its
40 right to amend, modify, repeal or otherwise alter any statute imposing
41 or relating to taxes, fees, or appropriations relating thereto.

42 § 1022-g. Exemption of the authority from taxation. 1. It is hereby
43 found and declared that the operation of the authority is primarily for
44 the benefit of the people of the participating municipalities, counties
45 and the state, for the improvement of their health, welfare and prosper-
46 ity, and is a public purpose, and the authority shall be regarded as
47 performing an essential governmental function in carrying out the
48 provisions of this title.

49 2. The authority shall be required to pay no taxes nor assessments
50 upon any of the property acquired or controlled by it or upon its activ-
51 ities in the operation and maintenance thereof or upon income derived
52 therefrom, provided that nothing herein shall prevent the authority from
53 entering into agreements to make payments in lieu of taxes.

54 3. The authority shall make payments in lieu of taxes to munici-
55 palities and school districts equal to the taxes and assessments which
56 would have been received from year to year by such jurisdiction.

1 4. The authority shall also make payments in lieu of taxes for those
2 taxes which would otherwise be imposed upon a utility corporation pursu-
3 ant to: (a) section one hundred eighty-six-a and former section one
4 hundred eighty-six of the tax law as such sections were in effect on
5 December thirty-first, nineteen hundred ninety-nine; (b) any taxes
6 imposed by a city within the authority's service area pursuant to the
7 authorization granted by section twenty-b of the general city law; and
8 (c) any taxes imposed by a village within the authority's service area
9 pursuant to authorization granted by section 5-530 of the village law.

10 5. Notwithstanding the exemption in subdivision two of this section,
11 the authority shall also be subject to the assessments imposed pursuant
12 to section eighteen-a of the public service law.

13 6. The securities issued by the authority, and the income therefrom
14 shall, at all times, be free from taxation, except for estate and gift
15 taxes.

16 7. Nothing in this title shall relieve the authority from its obli-
17 gations to register for sales tax purposes, collect state or local sales
18 and compensating use taxes imposed by or pursuant to the authority of
19 articles twenty-eight and twenty-nine of the tax law, and otherwise
20 comply with those articles on its sale of property or services.

21 § 1022-r. Actions against the authority. 1. Any action, suit or
22 proceeding to which the authority may be a party in which any question
23 arises as to the validity of this title or the valuation of stock or
24 assets acquired by the authority by the exercise of the power of eminent
25 domain shall be preferred over all other civil causes in all courts of
26 the state, except election matters, and shall be heard and determined in
27 preference to all other civil business pending therein, except election
28 matters, irrespective of position on the calendar. The same preference
29 shall be granted upon application of counsel to the authority in any
30 action or proceeding questioning the validity of this title or the valu-
31 ation of stock or assets acquired by the authority by the exercise of
32 the power of eminent domain in which such counsel may be allowed to
33 intervene. The venue of any such action or proceeding shall be laid in
34 the supreme court pursuant to article five of the civil practice law and
35 rules.

36 2. In the event any party shall appeal an award of compensation for
37 the taking by the authority of stock or assets, such party shall post a
38 bond in such amount, if any, as the supreme court shall deem appropriate
39 to adequately protect the interests of the other party under all circum-
40 stances.

41 3. An action against the authority founded on tort shall be commenced
42 in compliance with all the requirements of section fifty-e of the gener-
43 al municipal law, except that an action against the authority for wrong-
44 ful death shall be commenced in accordance with the provisions of title
45 eleven of article nine of this chapter.

46 § 1022-s. Equal employment opportunity. All contracts entered into by
47 the authority pursuant to this title of whatever nature and all docu-
48 ments soliciting bids or proposals therefor shall contain or make refer-
49 ence to the following provision:

50 The contractor shall not discriminate against employees or applicants
51 for employment because of race, creed, color, national origin, sex, age,
52 disability or marital status, and will undertake or continue existing
53 programs of affirmative action to ensure that minority group persons and
54 women are afforded equal opportunity without discrimination. Such
55 programs shall include, but not be limited to, recruitment, employment,
56 job assignment, promotion, upgrading, demotion, transfer, layoff, termi-

1 nation, rates of pay or other forms of compensation, and selection for
2 training and retraining, including apprenticeship and on-the-job train-
3 ing.

4 The HVPA shall diligently follow article fifteen-A of the executive
5 law to promote contracting with minority- and women-owned business
6 enterprises (MWBE).

7 § 1022-t. Limitation of liability; indemnification. 1. The trustees,
8 officers and employees of the authority, while acting within the scope
9 of their authority as trustees, officers or employees, shall not be
10 subject to any personal or civil liability resulting from the exercise,
11 carrying out or advocacy of any of the authority's purposes or power
12 unless the conduct of the trustees, officers or employees is finally
13 determined by a court of competent jurisdiction to constitute inten-
14 tional wrongdoing or recklessness.

15 2. The provisions of section eighteen of the public officers law shall
16 apply to trustees, officers and employees of the authority in connection
17 with any and all claims, demands, suits, actions or proceedings which
18 may be made or brought against any of them arising out of any determi-
19 nations made or actions taken or omitted to be taken in compliance with
20 any actions taken pursuant to the powers of this title.

21 3. As used in this section, the terms "trustee", "officer" and
22 "employee" shall include a former trustee, officer or employee and his
23 or her estate or judicially appointed personal representative.

24 4. Nothing in this section shall limit the obligations of a "trustee",
25 "officer", or "employee" of the authority or of a subsidiary of the
26 authority as a "person required to collect tax", as such term is defined
27 in article twenty-eight of the tax law, if such trustee, officer or
28 employee is, or was, under a duty to act for the authority or subsidi-
29 ary, or both, as the case may be, in complying with any requirement of
30 article twenty-eight or related provision of article twenty-nine of the
31 tax law.

32 § 1022-u. Public service law generally not applicable to the authori-
33 ty; inconsistent provisions in certain other acts superseded. 1. The
34 rates, services and practices relating to the electricity generated by
35 facilities owned or operated by the authority shall not be subject to
36 the provisions of the public service law or to regulation by, or the
37 jurisdiction of, the public service commission or the office of renewa-
38 ble energy siting, except to the extent that:

39 (a) the commission has promulgated regulations to contribute to
40 achieving the statewide greenhouse gas emissions limits established in
41 article seventy-five of the environmental conservation law;

42 (b) article seven of the public service law applies to the siting and
43 operation of a major utility transmission facility as defined therein;
44 and

45 (c) section eighteen-a of the public service law provides for assess-
46 ment for certain costs, property or operations.

47 2. The issuance by the authority of its obligations to acquire securi-
48 ties or assets of a utility shall be deemed not to be "state action"
49 within the meaning of the state environmental quality review act, and
50 such act shall not be applicable in any respect to such acquisition or
51 any action of the authority to effect such acquisition.

52 3. In the event that an audit indicates a finding of fraud, abuse, or
53 mismanagement by a former service provider of the authority, and upon a
54 finding by the public service commission that reasonable cause exists
55 for the basis of such indication, the public service commission may
56 order that any recommendations contained in the audit be implemented.

1 The public service commission may also provide in their order, the date
2 in which any recommendation must be fully implemented. Failure to comply
3 with any such order can result in the imposition of a civil penalty by
4 the public service commission against the former service provider or
5 revocation of the former service provider's authority to operate within
6 the state.

7 § 1022-v. Authority subject to certain provisions contained in the
8 state finance law, the public service law, the social services law and
9 the general municipal law. All contracts of the authority shall be
10 subject to the provisions of the state finance law relating to contracts
11 made by the state. The authority shall also establish rules and regu-
12 lations with respect to providing to its residential gas and electric
13 utility customers those rights and protections provided in article two
14 and sections one hundred seventeen and one hundred eighteen of the
15 public service law and section one hundred thirty-one-s of the social
16 services law. The authority shall conform to any safety standards
17 regarding manual lockable disconnect switches for solar electric gener-
18 ating equipment established by the public service commission pursuant to
19 subparagraph (ii) of paragraph (a) of subdivision five and subparagraph
20 (ii) of paragraph (a) of subdivision five-a of section sixty-six-j of
21 the public service law. The authority shall let contracts for
22 construction or purchase of supplies, materials, or equipment pursuant
23 to section one hundred three and paragraph (e) of subdivision four of
24 section one hundred twenty-w of the general municipal law.

25 § 1022-w. Website. The authority shall make accessible to the public,
26 via its official or shared internet website, documentation pertaining to
27 its mission, current activities, most recent annual financial reports,
28 current year budget and its most recent independent audit report unless
29 such information is covered by subdivision two of section eighty-seven
30 of the public officers law.

31 § 1022-x. Periodic review by the legislature. Beginning two years
32 after the effective date of this section, and not more than every ten
33 years thereafter, the legislature of the state of New York shall conduct
34 a comprehensive review, of the structure, activities and operations of
35 the authority, and the authority shall provide such records, reports and
36 testimony as the legislature may request to assist in the conduct of
37 this review.

38 § 1022-y. Hudson Valley power authority observatory. 1. A not-for-pro-
39 fit corporation known as the Hudson Valley power authority observatory
40 shall be established under section one thousand four hundred thirteen of
41 the not-for-profit corporation law by the inaugural statutory members
42 and charged with the duties and having the powers provided in this
43 title. The observatory shall be a special not-for-profit corporation as,
44 a political subdivision of the state, exercising governmental and public
45 powers, perpetual in duration, capable of suing and being sued and
46 having a seal, and which shall have the powers and duties enumerated in
47 this title, together with such others as may be conferred upon it by
48 law.

49 2. The purpose of the observatory is to operate as a quasi-governmen-
50 tal civil society organization to help the authority achieve its goals
51 by engaging in community participation, transparency, and local benefit
52 sharing. The observatory's primary functions are to monitor the utility,
53 conduct research, and support local projects.

54 3. The governing board of the authority shall consist of fifteen
55 members all of whom shall be residents of the service area, eight of
56 whom shall be determined by statute and seven of whom shall be appointed

1 by the statutory members. Of the statutory members, four will be elected
2 county representatives, who will be elected to four year terms in the
3 same election cycle as the governor as prescribed in the election law.
4 Three of these members will be from each of the core counties: Ulster,
5 Dutchess, and Greene (members one, two, and three). One member will be a
6 combined county member from the outlying counties in the service area:
7 Albany, Columbia, Orange, Putnam, and Sullivan (member four). Voters in
8 an election district will have the option to vote for an elected member
9 if there are any ratepayers in their election district. The board of
10 elections may call a special election after the bill is signed into law
11 to select the first four statutory members. Two statutory members will
12 be labor member representatives selected by the IBEW Local 320 (members
13 five and six). Two statutory members will be from one or more academic
14 institutions that are partners to the observatory (members seven and
15 eight). The statutory members will appoint the seven appointed members
16 (members nine through fifteen). Appointed members shall have expertise
17 in one of the relevant sectors mentioned in section one thousand twenty-
18 two-a of the this title. Members five through fifteen shall serve
19 staggered four-year terms, except during the first term of appointments
20 upon the effective date of the chapter of the laws of two thousand twenty-
21 four that added this section. Members five, eight, and eleven shall
22 be appointed for two years, members six, nine, twelve, and fourteen
23 shall be appointed for three years, and members seven, ten, thirteen,
24 and fifteen shall be appointed for four years. This will allow for stag-
25 gered appointments to ensure a degree of continuity of committee member-
26 ship.

27 4. The members shall serve with compensation and shall be entitled to
28 reimbursement of their actual and necessary expenses incurred in the
29 performance of their official duties, as may be authorized by the
30 members, in each case upon appropriate documentation by the submitting
31 member. The level of compensation will be the value of two course
32 releases, and the members will set the cash equivalent of a course
33 release for non-academic members on an annual basis. No member or any
34 entity, the majority of which is owned or controlled by any member,
35 shall receive any additional compensation from the authority or be
36 employed by the authority in any other capacity by whatever means.

37 5. Eight members shall constitute a quorum for the transaction of
38 business, and the affirmative vote of eight members at a meeting shall
39 be necessary to the validity of any resolution, order or determination.
40 The members, in by-laws or by resolution, may allow for attendance at a
41 meeting of the governing board by speaker phone or any other electronic
42 means by which all meeting participants can hear one another.

43 6. The members shall appoint an executive committee of not less than
44 five members and shall delegate such duties and responsibilities of the
45 members to the executive committee as it may determine from time to
46 time. In addition to the executive committee, there will be a monitor-
47 ing council, research council, and local projects council. The monitor-
48 ing council shall study the utility as a traditional independent watch-
49 dog and deliver comments or make recommendations to the Hudson Valley
50 power authority's board of trustees. The research council shall review
51 the authority's operations in terms of reliability, affordability,
52 climate resilience, and environmental justice. The local projects coun-
53 cil shall support communities in their own efforts to create or imple-
54 ment energy projects and partnerships independent of the authority. Each
55 year, the authority will transfer a portion of its revenue into communi-
56 ty-controlled trust funds. The local projects council will run a parti-

1 icipatory budgeting process to democratically decide on community benefit
2 projects the fund can be spent towards. Local elected officials will
3 play a critical role in helping shape the process. The members may
4 appoint such additional committees with such duties and responsibilities
5 as they may determine from time to time.

6 7. The members from time to time shall hire, without regard to any
7 personnel or civil service law, rule or regulation of the state, such
8 officers and employees, including an executive director and such engi-
9 neering, management and legal officers, and other professional employ-
10 ees, including but not limited to accounting, planning, construction,
11 marketing, finance, appraisal, banking and trustee services, trans-
12 mission and distribution, energy management, information technology,
13 cyber security, power supply, human resources, procurement, treasury,
14 energy efficiency, customer service and any other area of utility oper-
15 ations, as the members may require for the performance of their duties
16 and shall prescribe the duties and compensation of each such officer and
17 employee. Such compensation shall be reasonable and commensurate to the
18 duties of the position of such officer or employee.

19 8. The observatory and its non-profit existence shall continue until
20 terminated by law once incorporated.

21 9. In the event that the Hudson Valley power authority does not
22 commence delivering electric power within ten years of the effective
23 date of this title, the observatory shall cease to exist and the
24 provisions of this title shall be of no further force and effect.

25 § 1022-z. Severability. The provisions of this title are severable,
26 and if any clause, sentence, paragraph, section or part of this title,
27 or the application thereof to any person or circumstance, shall be
28 adjudged by any court of competent jurisdiction to be invalid or unen-
29 forceable, such judgment shall not affect, impair or invalidate the
30 remainder of this title or the application of such provision to any
31 other person or circumstance, but shall be confined in its operation to
32 the clause, sentence, paragraph, section or part thereof or person or
33 circumstance directly involved in the controversy in which such judgment
34 shall have been rendered.

35 § 2. Subdivision 1 of section 51 of the public authorities law is
36 amended by adding a new paragraph o to read as follows:

37 o. Hudson Valley Power Authority

38 § 3. Subdivision 6 of section 1005 of the public authorities law, as
39 amended by chapter 294 of the laws of 1968, the opening paragraph as
40 amended by section 18 of part CC of chapter 60 of the laws of 2011,
41 paragraph f as added by chapter 294 of the laws of 1968, paragraph d as
42 amended, paragraph e as added and paragraph f as relettered by chapter
43 369 of the laws of 1974, is amended to read as follows:

44 6. To develop, maintain, manage and operate its projects other than
45 the Niagara and Saint Lawrence hydroelectric projects so as (i) to
46 provide an adequate supply of energy for optimum utilization of its
47 hydroelectric projects, (ii) to attract and expand high load factor
48 industry, (iii) to [~~provide for the additional needs of its municipal~~
49 ~~electric and rural electric cooperative customers~~] operate for the bene-
50 fit of the general public and, in disposing of electric energy generated
51 at these facilities, to give preference at all times to municipalities,
52 other political subdivisions of the state, and cooperatives, (iv) to
53 provide a supply of power and energy for use in the recharge New York
54 power program as recharge New York market power, and (v) to assist in
55 maintaining an adequate, dependable electric power supply for the state.

1 An application by any municipality, other political subdivision of the
2 state, or cooperative for an allocation of electric energy shall not be
3 denied, or another application competing or in conflict therewith be
4 granted, to any private corporation, company, agency, or person, on the
5 ground that any proposed bond or other security issue of any such public
6 body or cooperative, the sale of which is necessary to enable such
7 prospective purchaser to enter into the public business of selling and
8 distributing the electric energy proposed to be purchased, has not been
9 authorized or marketed, until after a reasonable time, to be determined
10 by the administrator, has been afforded such public body or cooperative
11 to have such bond or other security issue authorized or marketed.

12 It is declared to be the policy of the legislature, as expressed in
13 this chapter, to preserve the said preferential status of municipi-
14 palities, other political subdivisions of the state, and cooperatives
15 herein referred to, and to give to the people of the state within
16 economic transmission distance of the authority's facilities reasonable
17 opportunity and time to hold any election or elections or take any
18 action necessary to create such political subdivisions of the state and
19 cooperatives as the laws of the state authorize and permit, and to
20 afford such political subdivisions of the state or cooperatives reason-
21 able time and opportunity to take any action necessary to authorize the
22 issuance of bonds or to arrange other financing necessary to construct
23 or acquire necessary and desirable electric distribution facilities, and
24 in all other respects legally to become qualified purchasers and
25 distributors of electric energy available under this chapter.

26 Contracts for the sale, transmission and distribution of power and
27 energy generated by such projects shall provide for the effectuation of
28 the policy set forth in this title relating to such projects and shall
29 provide:

- 30 a. Payment of all operating and maintenance expenses of the projects.
- 31 b. Interest on and amortization and reserve charges sufficient within
32 fifty years of the date of issuance to retire the bonds of the authority
33 issued for the projects.
- 34 c. For the cancellation and termination of any such contract upon
35 violation of the terms thereof by the purchasing, transmitting or
36 distributing public agency or company, or any subsidiary thereof.
- 37 d. That the rates, services and practices of the purchasing, transmit-
38 ting and/or distributing public agencies and rural electric cooperatives
39 in respect to the power and energy from such projects shall be governed
40 by the provisions and principles established in the contract, and not by
41 regulations of the public service commission or by general principles of
42 public service law regulating rates, services and practices and that in
43 the event any such public agencies or cooperatives which purchase power
44 from the authority shall sell any such power for resale, such sale for
45 resale shall be made at rates no higher than those at which the power
46 was purchased from the authority.
- 47 e. In the case of a contract with an electric corporation entered into
48 on or after May first, nineteen hundred seventy-four (i) for assurances
49 by the electric corporation of prompt and timely payment of all bills
50 rendered by the authority and that failure to make such prompt and time-
51 ly payment shall be grounds for immediate termination of the contract,
52 and (ii) that in the event the contract is so terminated, the electric
53 company will wheel to such purchasers as the authority may direct the
54 power and energy that would have been sold to the electric company had
55 the contract not been terminated.

1 f. Grant reasonable rate discounts to municipalities, other political
2 subdivisions of the state, and cooperatives in a manner not inconsistent
3 with the provisions and policy of this title.

4 g. In order to foster a close relationship between public power enti-
5 ties, specifically between the Hudson Valley power authority and the New
6 York power authority, the latter is tasked with building, owning, and
7 operating new transmission for the former under certain circumstances.
8 Specifically, if the Hudson Valley power authority requests that new
9 transmission be built by the New York power authority because it would
10 be cheaper or more efficient than building it itself, the New York power
11 authority shall not deny any reasonable request.

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

14 § 4. The not-for-profit corporation law is amended by adding a new
15 section 1413 to read as follows:

16 § 1413. Energy observatory corporations.

17 (a) Definitions. An energy observatory corporation is a corporation
18 formed under or by a general or special law for studying and enabling
19 effective community governance of power authorities.

20 (b) Type of corporation. An energy observation corporation is a non-
21 charitable corporation under this chapter.

22 (c) Corporate name. An energy observatory corporation shall be called
23 the name of the authority it monitors and studies with "observatory"
24 appended to it at the end. No other corporation shall have the same
25 name.

26 (d) Governing board. An energy observatory corporation shall be
27 managed by its governing board. The number of members shall not be less
28 than five and shall not be greater than twenty. The members should have
29 a diversity of experience from the following relevant sectors: environ-
30 mental justice, consumer protection, indigenous nation rights, community
31 renewable energy, electrification, energy efficiency, workplace issues,
32 and local government.

33 (e) Funding of the observatory corporation:

34 (1) An observatory corporation shall be funded through a monthly fee
35 of each ratepayer served by the authority. The observatory shall be set
36 up with a one-time donation of not less than five hundred thousand
37 dollars from the authority.

38 (2) An observatory corporation shall not issue bonds, stocks, or other
39 security interests or incur a debt to a bank or other financial institu-
40 tion of any duration.

41 (3) An observatory corporation shall only place cash reserves or
42 surplus in a checking or savings account at a depository institution.

43 (f) Restrictions on the formation of corporations. There shall be but
44 one energy observation corporation per authority.

45 (g) Staff. An energy observatory corporation shall employ an executive
46 director, staff, and such other agents and employees, permanent or
47 temporary, as it may require, and may determine the qualifications and
48 fix the compensation and benefits of such persons.

49 (h) Public assemblies. The board and executive director shall hold
50 semi-annual assemblies to ensure public participation, transparency and
51 accountability.

52 § 5. This act shall take effect on the one hundred eightieth day after
53 it shall have become a law. Effective immediately, the addition, amend-
54 ment and/or repeal of any rule or regulation necessary for the implemen-
55 tation of this act on its effective date are authorized to be made and
56 completed on or before such effective date.