

July 29, 2014

MEMORANDUM TO THE TRUSTEES

FROM THE PRESIDENT and CHIEF EXECUTIVE OFFICER

SUBJECT: Awards of Fund Benefits from the Western New York Economic Development Fund Recommended by the Western New York Power Proceeds Allocation Board

SUMMARY

The Trustees are requested to accept the recommendations of the Western New York Power Proceeds Allocation Board (“WNYPPAB”) and approve the awards of Fund Benefits from the Western New York Economic Development Fund to NFIA Stakeholders Group, Inc. and Praxair, Inc., the eligible applicants listed in Exhibit “A,” and authorize the other actions described herein with respect to such applicants and recommended awards.

For informational purposes, Exhibit “B” lists applications that were deferred by the WNYPPAB for future consideration.

BACKGROUND

1. Western New York Power Proceeds Allocation Act

On March 30, 2012, Governor Cuomo signed into law the Western New York Power Proceeds Allocation Act (the “Act”). The Act provides for the creation, by the Authority, of the Western New York Economic Development Fund. The Fund consists of the aggregate excess of revenues received by the Authority from the sale of Expansion Power (“EP”) and Replacement Power (“RP”) produced at the Niagara Power Project that was sold in the wholesale energy market over what revenues would have been received had such energy been sold on a firm basis to an eligible EP or RP customer under the applicable tariff or contract.

Under the Act, an “eligible applicant” is a private business, including a not-for-profit corporation. “Eligible projects” is defined to mean “economic development projects by eligible applicants that are physically located within the State of New York within a thirty-mile radius of the Niagara Power Project located in Lewiston, New York that will support the growth of business in the state and thereby lead to the creation or maintenance of jobs and tax revenues for the state and local governments.” Eligible projects include, for example, capital investments in buildings, equipment, and associated infrastructure owned by an eligible applicant for fund benefits; transportation projects under state or federally approved plans; the acquisition of land needed for infrastructure; research and development where the results of such research and development will directly benefit New York state; support for tourism and marketing and advertising efforts for western New York state tourism and business; and energy-related projects.

Eligible projects do not include public interest advertising or advocacy; lobbying; the support or opposition of any candidate for public office; the support or opposition to any public issue; legal fees related to litigation of any kind; expenses related to administrative proceedings before state or local agencies; or retail businesses as defined by the board, including without limitation, sports venues, gaming and gambling or entertainment-related establishments, residential properties, or places of overnight accommodation.

Fund Benefits have been provided to successful eligible applicants in the form of grants. It is anticipated that Fund Benefits will be disbursed as reimbursement for expenses incurred by an Eligible Applicant for an Eligible Project.

At least 15% percent of Fund Benefits must be dedicated to eligible projects which are “energy-related projects, programs and services,” which is “energy efficiency projects and services, clean energy technology projects and services, and high performance and sustainable building programs and services, and the construction, installation and/or operation of facilities or equipment done in connection with any such projects, programs or services.”

Allocations of Fund Benefits may only be made on the basis of moneys that have been deposited in the Fund. No award may encumber future funds that have been received but not deposited in the Fund.

2. Western New York Power Proceeds Allocation Board

Under the Act, the WNYPPAB is charged with soliciting applications for Fund Benefits, reviewing applications, making eligibility determinations, and evaluating the merits of applications for Fund Benefits. WNYPPAB uses the criteria applicable to EP, RP and Preservation Power (“PP”), and for revitalization of industry as provided in Public Authorities Law §1005. Additionally, WNYPPAB is authorized to consider the extent to which an award of Fund Benefits is consistent with the strategies and priorities of the Regional Economic Development Council having responsibility for the region in which an eligible project is proposed. A copy of these criteria (collectively, “Program Criteria”), adapted from WNYPPAB’s “Procedures for the Review of Applications for Fund Benefits,” is attached as Exhibit “C.”

The WNYPPAB met on March 4, 2013 and, in accordance with the Act, adopted by-laws, operating procedures, guidelines related to the application, and a form of application. At that time, WNYPPAB defined “retail business” to mean a business that is primarily used in making retail sales of goods or services to customers who personally visit such facilities to obtain goods or services.

WNYPPAB also designated the Western New York Regional Director of Empire State Development Corporation (“ESD”) to be its designee (“Designee”) to act on its behalf on all administrative matters. Among other things, the Designee was authorized to preform analyses of the applications for Fund Benefits and make recommendations to WNYPPAB on the applications.

Under the Act, a recommendation for Fund Benefits by WNYPPAB is a prerequisite to an award of Fund Benefits by the Authority, and the Act authorizes the Authority to award Fund Benefits to an applicant upon a recommendation of the WNYPPAB. Upon a showing of good cause, the Authority has discretion as to whether to adopt the WNYPPAB's recommendation, or to award benefits in a different amount or on different terms and conditions than proposed by the WNYPPAB. In addition, the Authority is authorized to include within the contract covering an award ("Award Contract") such other terms and conditions the Authority deems appropriate.

3. Application Process

In an effort to provide for the efficient review of applications and disbursement of Fund Benefits, the WNYPPAB established a schedule of dates through the end of 2014 on which the WNYPPAB would meet to consider applications. At this time, applications are being accepted on a rolling basis. In addition, the application process was promoted through a media release and with assistance from state and local entities, including the Western New York and Finger Lakes Regional Economic Development Councils, the Empire State Development Corporation and other local and regional economic development organizations within the State. A webpage was created that is hosted on WWW.NYPA.GOV/WNYPPAB with application instructions, a link to the approved application form and other program details including a contact phone number and email address staffed by the Western New York Empire State Development regional office.

DISCUSSION

For this seventh round of WNYPPAB action, the WNYPPAB considered five applications seeking more than \$6.4 million in Fund Benefits. WNYPPAB's staff analyzed the applications and made recommendations to WNYPPAB concerning each of the applications based on eligibility requirements and Program Criteria. Copies of the recommendations from staff to the WNYPPAB regarding recommended awards of Fund Benefits can be found in Exhibit "D."

At its June 23, 2014 meeting, the WNYPPAB took the following actions on applications for Fund Benefits:

1. Recommendations for Awards of Fund Benefits

The WNYPPAB is recommending to the Trustees that the applications listed on Exhibit "A" receive an award of Fund Benefits in the amounts indicated. The applicants have indicated that the proposed projects would directly create or retain approximately 1,376 jobs in Western New York. The total to be expended on the proposed projects is expected to exceed \$39 million. These two recommendations are presently before the Trustees for consideration.

Given the nascent stage of the proposed projects, it was not possible at this time to identify all of the terms and conditions that would be applicable to each award and memorialized in an Award Contract. With the Trustees' authorization, it is anticipated that the Authority, in consultation with ESD, will negotiate final terms and conditions with successful applicants after receipt of more detailed information concerning the projects and proposed schedules. In addition

to appropriate business terms, staff anticipates that Award Contracts will contain provisions for periodic audits of the successful applicant for the purpose of determining contract and program compliance and, where appropriate, terms providing for the partial or complete recapture of Fund Benefits disbursements if the applicant fails to maintain agreed-upon commitments, relating to, among other things, employment levels and/or project element due dates.

2. Other WNYPPAB Determinations

The following information is being provided to the Trustees for their information only. No action is required by the Trustees with respect to this matter:

- Exhibit “B” lists applications that were deferred for future consideration.

RECOMMENDATION

The Vice President, Marketing recommends that:

- (1) the Trustees accept the recommendations of the Western New York Power Proceeds Allocation Board (“WNYPPAB”) and make awards of Fund Benefits to NFIA Stakeholders Group, Inc. and Praxair, Inc., in the amounts identified in Exhibit “A,” conditioned upon an agreement to be negotiated with each applicant on the final terms and conditions that would be applicable to each award to be contained in an Award Contract approved by the President and Chief Executive Officer and approved by the Executive Vice President and General Counsel as to form;
- (2) the Senior Vice President – Economic Development and Energy Efficiency, or his designee(s), in consultation with ESD, be authorized to negotiate with the applicants concerning such final terms and conditions that will be applicable to the awards; and
- (3) the Senior Vice President – Economic Development and Energy Efficiency, or his designee, be authorized to execute, on behalf of the Authority, Award Contracts for the awards subject to the foregoing conditions.

For the reasons stated, I recommend the approval of the above-requested action by adoption of the resolution below.

Gil C. Quiniones
President and Chief Executive Officer

RESOLUTION

WHEREAS, the Western New York Power Proceeds Allocation Board (“WNYPPAB”) has recommended that the Authority make awards of Fund Benefits from the Western New York Economic Development Fund (“Fund”) to NFIA Stakeholders Group, Inc. and Praxair, Inc., the eligible applicants listed in Exhibit “A”;

NOW THEREFORE BE IT RESOLVED, That the Authority hereby accepts the recommendation of the WNYPPAB and authorizes the awards of Fund Benefits to the applicants and in the amounts listed in Exhibit “A,” conditioned upon an agreement between the Authority and each applicant on the final terms and conditions that would be applicable to each award and set forth in a written award contract (“Award Contract”) between the Authority and each applicant approved by the President and Chief Executive Officer and by the Executive Vice President and General Counsel as to form; and be it further

RESOLVED, That the Senior Vice President – Economic Development and Energy Efficiency, or his designee, in consultation with the Empire State Development Corporation, is authorized to negotiate with the successful applicants concerning such final terms and conditions that will be applicable to the awards; and be it further

RESOLVED, That the Senior Vice President – Economic Development and Energy Efficiency, or his designee, is authorized to execute, on behalf of the Authority, Award Contracts for the awards listed on Exhibit “A” subject to the foregoing conditions; and be it further,

RESOLVED, That the Chairman, the Vice Chair, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.

Applicants Recommended for an Award of Fund Benefits

Line	Business	City	County	Economic Development Region	Project Description	Project Type	Recommended Award Amount	Total Project Cost	Jobs Retained	Jobs Created
1	Praxair, Inc.	Tonawanda	Erie	Western NY	Upgrade of the technology and R&D center	Business Investment	\$500,000	\$38,775,000	1,354	22
2	NFIA Stakeholders Group, Inc.	Niagara Falls	Niagara	Western NY	Fiber optics assessment	Infrastructure/Downtown Investment	\$125,000	\$250,000	-	-

Total: \$625,000 \$39,025,000 1,354 22

Total Jobs Created & Retained: 1,376

Applications Deferred for Further Analysis

Line	Business	Classification
1	City Labs, Inc.,	Deferred for further analysis
2	Riviera Theatre and Organ Preservation Society Inc.	Deferred for further analysis
3	WNY Science & Technology Advanced Manufacturing Park	Deferred for further analysis

Western NY Power Proceeds Allocation Board Exhibit “C”

Criteria adapted from the Western NY Power Proceeds Allocation Board’s “Procedures for the Review of Applications for Fund Benefits”

1. The extent to which an award of Fund Benefits would be consistent with the strategies and priorities of the Regional Economic Development Council (“REDC”) having responsibility for the region in which an Eligible Project is located.¹ The Western New York Regional Economic Development Council which is responsible for Eligible Projects in Erie and Niagara Counties Strategies & Priorities are:
 - Promote “Smart Growth” by investing in areas that infrastructure already exists and achieves certain goals, such as: preserving historic buildings; reviving downtowns; reviving main streets; investing in existing neighborhoods; and investing in former industrial sites. A project consistent with Smart Growth will also focus on: enhancing walkability; enhancing multiple modes of transportation; connecting disadvantaged communities to employment clusters; spurring mixed-use private investment in existing communities and preserving/enhancing natural lands and or resources.
 - Promote workforce development by increasing diversity in the labor force, developing and cultivating that includes workers with advancement potential, underemployed, unemployed and special population; align education and skills training to job market for current and future industry needs.
 - Foster entrepreneurship and new business formation and growth. Designing a plan that brings new technologies and/or products to the marketplace, increases new start ups in strategic industries and facilitates the commercialization of products that can lead to job growth in the Region.
 - Increase the industry profile of agriculture in WNY by: creating better access to markets; creating new products; creating new more efficient processes; creating strong regional brands; creating programs that promote careers in agriculture.
 - Utilize Western New York’s proximity to Canadian and U.S. population centers to advance economic development in WNY. Bi-national projects will: utilize cross-border planning to create transportation and logistical infrastructure; improve

¹ As provided for in EDL § 189-c(4), criteria 2-15 are adapted from the criteria for eligibility for Expansion Power, Replacement Power and Preservation Power under Public Authorities Law § 1005. The specific criteria identified in PAL § 1005(13)(b)(4)-(5) are relevant to power allocations under these programs but do not have any logical application to allocations of Fund Benefits. Therefore, the Board does not expect to use these criteria to evaluate applications for Fund Benefits. Additionally, in accordance with PAL § 1005(13), criteria 13-15 listed herein will only be used in the case of Eligible Projects which are proposed by Applicants as, and determined by the Board to be, “revitalization” projects.

operational relationships; promote the attractiveness of WNY as a hub for global trade.

- Position the WNY region as a global energy hub through new sources of clean energy, energy efficiency and energy efficient transportation.
- Support growth of advanced manufacturing by making research more available to manufacturers to help them innovate.
- Spur growth in the health and life sciences industry through improved commercialization, recruit high profile research talent and reducing the cost burden of healthcare while improving health outcomes.
- Expand the scope of higher education by increasing accessibility to Higher Education for communities that currently have limited access to educational opportunities; better aligning education with the industry needs and creating support structures for start-ups which will assist start-ups with commercialization, business planning, workforce preparation, facilities, etc.
- Grow visitors and visitor spending by raising the profile of WNY as a national and international destination; connect multiple tourist destinations in WNY; improve the profile of the WNY Gateway to the United States.

For more information on the Western New York Regional Economic Development Council please go to <http://regionalcouncils.ny.gov/content/western-new-york>.

2. The extent to which an award of Fund Benefits would be consistent with the strategies and priorities of the Regional Economic Development Council (“REDC”) having responsibility for the region in which an Eligible Project is located.² The Finger Lakes Regional Economic Development Council which is responsible for Eligible Projects in Orleans and Genesee Counties Strategies & Priorities can be found at: <http://regionalcouncils.ny.gov/content/finger-lakes>.
3. The number of jobs that would be created as a result of an award of Fund Benefits.
4. The applicant’s long term commitment to the region as evidenced the current and/or planned capital investment in applicant’s facilities in the region.
5. The ratio of the number of jobs to be created to the amount of Fund Benefits requested.
6. The types of jobs that would be created, as measured by wage and benefit levels, security and stability of employment.
7. The amount of capital investment, including the type and cost of buildings, equipment and facilities, proposed to be constructed, enlarged or installed.
8. The extent to which an award of Fund Benefits would affect the overall productivity or competitiveness of the applicant and its existing employment.

² As provided for in EDL § 189-c(4), criteria 2-15 are adapted from the criteria for eligibility for Expansion Power, Replacement Power and Preservation Power under Public Authorities Law § 1005. The specific criteria identified in PAL § 1005(13)(b)(4)-(5) are relevant to power allocations under these programs but do not have any logical application to allocations of Fund Benefits. Therefore, the Board does not expect to use these criteria to evaluate applications for Fund Benefits. Additionally, in accordance with PAL § 1005(13), criteria 13-15 listed herein will only be used in the case of Eligible Projects which are proposed by Applicants as, and determined by the Board to be, “revitalization” projects.

9. The extent to which an award of Fund Benefits may result in a competitive disadvantage for other business in the State.
 10. The growth potential of the applicant's facilities and the contribution of economic strength to the area in which the applicant's facilities are or would be located.
 11. The extent of the applicant's willingness to satisfy affirmative action goals.
 12. The extent to which an award of Fund Benefits is consistent with state, regional and local economic development strategies and priorities and supported by local units of government in the area in which the business is located.
 13. The impact of an award of Fund Benefits on the operation of any other facilities of the applicant, and on other businesses within the region.
 14. That the business is likely to close, partially close or relocate resulting in the loss of a substantial number of jobs.
 15. That the applicant is an important employer in the community and efforts to revitalize the business are in long-term interests of both employers and the community.
 16. That a reasonable prospect exists that the proposed award of Fund Benefits will enable the applicant to remain competitive and become profitable and preserve jobs for a substantial period of time.
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Recommended Award: Exhibit "D"

Applicant Name:	NFIA Stakeholders Group, Inc.	REDC Region:	WNY
Project Type:	Dark Fiber Assessment	County:	Niagara
Industry:	Multiple Industry Sectors	Locality:	Niagara Falls
Amount Requested:	\$125,000	Start Date:	7/1/2014
		Finish Date:	12/31/2014

RECOMMENDED OFFER

Recommended Total Award:	\$125,000
Total Project Cost:	\$250,000
% of Project Cost Recommended:	50%

REGIONAL IMPACT MEASUREMENTS

Number of Jobs Retained:	N/A
Number of Jobs Created:	N/A
Average Salary of Jobs:	N/A
Indirect Jobs Created	N/A
Other Impact	

PROJECT DESCRIPTION (adapted from application)

The NFIA (Niagara Falls International Airport) Stakeholders Group is made up of different members of the Buffalo Niagara Region that share an interest in the expansion of air services in Niagara Falls and the long-term economic success of the greater Niagara Region. The purpose of this project is to perform a study of the existing dark fiber infrastructure that feeds into the Niagara Falls Air Reserve Station, the Niagara Falls International Airport, the former Army Reserve Center site, the Niagara Airport Commercial Park, the Wheatfield Business Park and the Calspan site. The Stakeholders Group has identified dark fiber capacity as being a key feature for the long-term economic development of the above stated sites. The results of this study will provide guidance to the Stakeholders on what, if any, gaps in coverage exist and allow them to add capacity to ensure that all of the named sites remain stable and are able to accommodate future growth.

BASIS FOR RECOMMENDATION

The sites involved in this study make up the largest employment base in Niagara County. Securing the future of each of these sites is paramount to the long-term economic success of the entire Buffalo Niagara Region.

The Niagara Falls Air Reserve Center currently employs over 3,000 people in Niagara County and, due to the changing nature of military missions, the base must constantly upgrade its own technological infrastructure to attract more advanced missions. This study will provide a much needed assessment to the airbase and give them an understanding of where upgrades are needed to secure its future.

The Niagara Falls International Airport is very important to regional efforts surrounding tourism. This study of dark fiber capacity will also lend itself to the future success of the airport. As the airport

markets itself to prospective carriers the capabilities of the existing fiber infrastructure will be considered. This study will give the Airport a clear sense of what the current capability is and it will identify places where improvements must be made to accommodate a targeted customer base.

As technology has evolved so has the need to meet certain thresholds when it comes to fiber infrastructure. The above named sites are of the highest priority to Niagara County and the Greater Buffalo Niagara Region. To ensure the future of all of these sites and the economic future of the WNY Region this study must be done in the near term.

It is the recommendation to this Board that it recommend a grant of \$125,000 to the NFIA Stakeholders Group, Inc. to provide one half of the financing needed to successfully perform this study. Due to the nature of the project it is recommended that the grant be paid to the Stakeholders group in advance of the start of the study but only upon confirmation that (1) another funding entity has committed to a matching grant for the completion of the study and (2) the data sought by the study is not otherwise available from New York State or other publicly available resources.

Recommended Award: Exhibit "D"

Applicant Name:	Praxair, Inc.	REDC Region:	WNY
Project Type:	Update of R&D Facility	County:	Erie
Industry:	Industrial Gas	Locality:	Tonawanda
Amount Requested:	\$2,500,000	Start Date:	7/01/2014
		Finish Date:	7/01/2016

RECOMMENDED OFFER

Recommended Total Award:	\$500,000
Total Project Cost:	\$38,775,000
% of Project Cost Recommended:	1%

REGIONAL IMPACT MEASUREMENTS

Number of Jobs Retained:	1354
Number of Jobs Created:	22
Average Salary of Jobs:	\$82,000
Indirect Jobs Created	
Other Impact	

PROJECT DESCRIPTION (adapted from application)

Praxair is one of the largest employers in the Town of Tonawanda where the company operates a facility responsible for: Global Plant Engineering; Research and Development; North American Operations Communications; Global Plant Monitoring; Customer Demand Monitoring; and Fleet Dispatch and Back Office Support Functions. To continue the success of the Tonawanda facility and maintain the current growth trajectory, Praxair must complete a major facility upgrade. These upgrades are estimated to cost \$38,775,000, and will allow Praxair to keep pace with technological advancement while at the same time maintaining and growing the workforce in Tonawanda. This project is confirmation of Praxair's willingness to make a long term commitment to the WNY Region but other geographical locations continue to be considered.

BASIS FOR RECOMMENDATION

As stated in the project description, Praxair has long been one of the largest employers in WNY, including in Tonawanda. The value of Praxair to the WNY community is significant. This project represents an opportunity for New York State to work with a major U.S. corporation to ensure a long-term commitment to the WNY Region.

The Praxair facility in the Town of Tonawanda plays a central role in several aspects of the company's global operations. It would be a sound use of Fund Benefits to support the upgrade of this facility and maintain its status as a state of the art research center.

It is the recommendation to the Board that it recommend a grant of Fund Benefits in the amount of \$500,000 to complete a comprehensive NYS incentive package that will secure the long-term future of Praxair in WNY. Due to the nature of this project and the incentives being offered by Empire State

Development, it is recommended that this grant be paid out in 3 milestone payments (50%/25%/25%) coinciding with the milestone payments proposed by ESD for other project incentives.