WESTERN NEW YORK POWER PROCEEDS ALLOCATION BOARD

PROCEDURES FOR THE REVIEW OF APPLICATIONS FOR FUND BENEFITS

Released March 4, 2013

Western New York
Power Proceeds Allocation Board

The New NY WORKS for Business

These Procedures for the Review of Applications for Fund Benefits ("Procedures") shall be applicable to the review of applications for Fund Benefits by the Western New York Power Proceeds Allocation Board ("Allocations Board" or "Board") under the Western New York Power Proceeds Allocation Act (the "Act"). Unless otherwise indicated, capitalized terms used in these Procedures shall have the meaning given to them in Economic Development Law ("EDL") § 189-a, or the Guidelines for Applications for Fund Benefits from the Western New York Economic Development Fund. These Procedures are subject to change without prior notice.

A. Eligible Applicants and Eligible Projects

Only Applications for Fund Benefits submitted by Eligible Applicants for Eligible Projects will be considered for a recommendation for an award of Fund Benefits.

Incomplete applications will not be considered for award. If an application is deemed incomplete the applicant will be notified within 20 days of receipt of the application.

An "Eligible Applicant" is a private business, including a not-for-profit corporation.

Municipalities, Public Benefit Corporations and **Government Entities** are **NOT ELIGIBLE** for Fund Benefits.

An "Eligible Project" is an economic development project by an Eligible Applicant that is physically located within the State of New York ("State") within a thirty (30) mile radius of the New York Power Authority's ("NYPA") Niagara Power Project in Lewiston, New York. Eligible Projects are those that 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. The following are examples of Eligible Projects:

- capital investments in buildings, equipment, and associated infrastructure (collectively, "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 and Finger Lakes Regional tourism and business.; and
- "energy-related projects, programs and services".[1]

[1] In accordance with EDL § 189-a(6), "energy-related projects, programs and services" means: (1) energy efficiency projects and services; (2) clean energy technology projects and services; (3) high performance and sustainable building programs and services; and (4) the construction, installation and/or operation of facilities or equipment done in connection with any such projects, programs or services.

As dictated by the Western New York Power Proceeds Allocation Act, a minimum of 15% of the funds awarded will go to "energy-related projects, programs and services".[1]

The following are **examples** of projects or initiatives which are **NOT** Eligible Projects:

- Municipalities, Public Benefit Corporations and Government Entities
- 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; and
- retail businesses[2], including by way of example, sports venues, gaming and gambling or entertainment-related establishments, residential properties, or places of overnight accommodation.

B. Application Process

1. Form of Application

The "Application for Fund Benefits under the Western New York Power Proceeds Allocation Act" ("Application") has been created to follow this set of procedures. Only this Application may be used to apply for Fund Benefits.

2. Application Solicitation

At any time when Fund Benefits are available, the Board, in its discretion, may solicit Applications by public notice ("Application Solicitation Notice").

The Application Solicitation Notice will be in the form of newspaper advertisements, press releases, website postings, and/or such other means as the Board finds appropriate, and is expected to describe such matters as the procedures that Eligible Applicants must be follow in order to file an Application.

C. Review and Recommendation Process

[2] In accordance with EDL § 189-a(5), the Board defines "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.

The Board will review Applications after the close of the specified solicitation period. No priority will be attached to any properly-filed Application based on the date such Application was filed.

The Board reserves the right to reject any Application that is filed after a filing deadline prescribed by the Board, or that provides incomplete, inaccurate or unresponsive information.

The Board or the Board's designee may require any applicant to provide additional information in support of an Application. The Board reserves the right to reject the Application of any applicant who fails to timely provide additional information so requested.

Changes to a timely-filed Application may only be made with the consent of the Board or a Board member or the Board's designee for good cause shown. The Board or the Board's designee may require any applicant to file an amended Application or new Application based on the nature of any proposed changes to a previously-filed Application.

The Board will review complete and properly-submitted Applications based on the following criteria:

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.[3] 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,

[3] 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.

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 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.[4] The Finger Lakes Regional Economic Development

[4] 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.

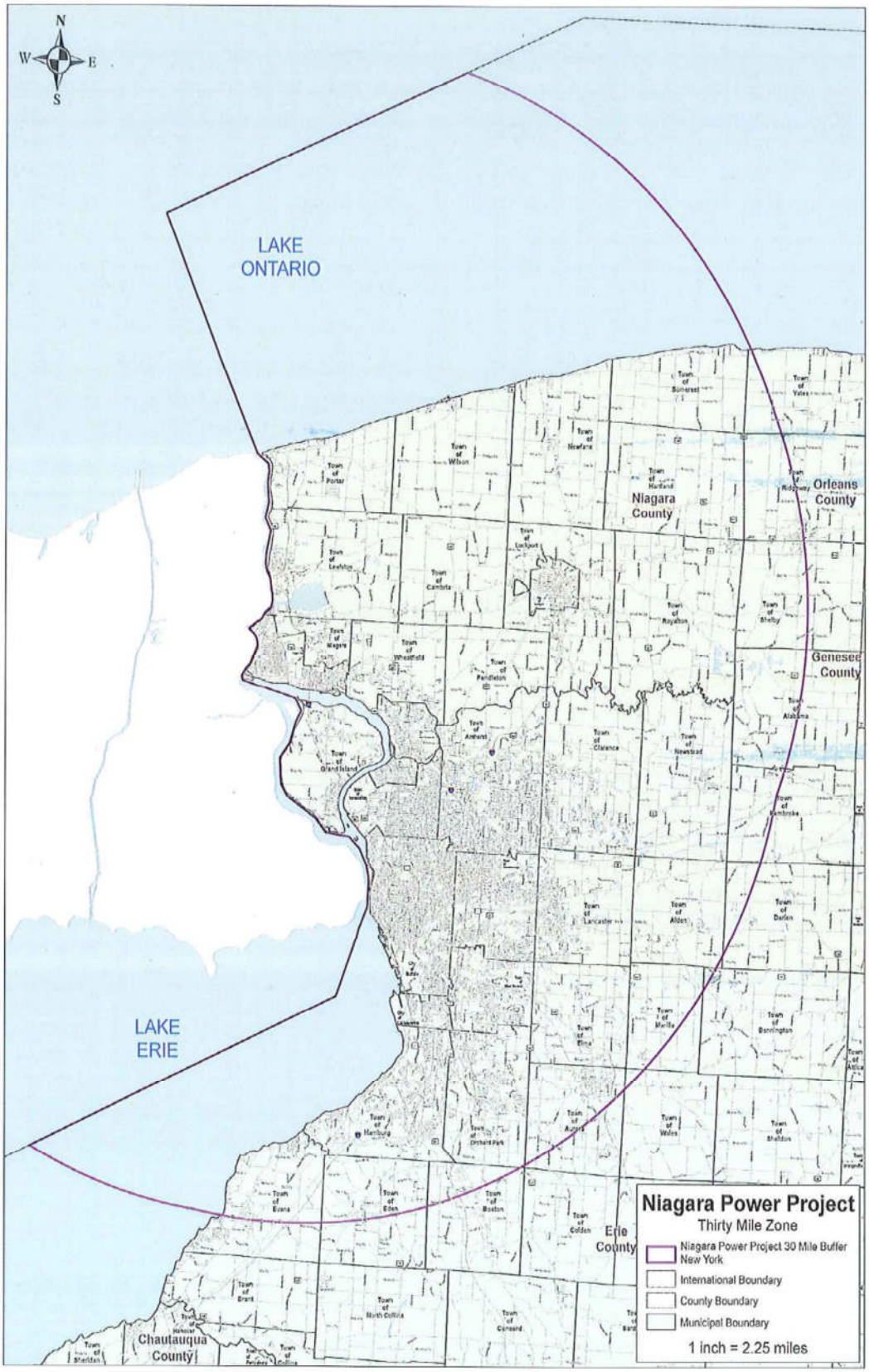
Council which is responsible for Eligible Projects in Orleans and Genesee Counties Strategies & Priorities can be found at: http://regionalcouncils.ny.gov/content/finger-lakes.

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.
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.

The Board reserves the right to solicit and consider the views of the WNYREDC, the Finger Lakes REDC, the WNYREDC's designee or the Finger Lakes REDC designee, in order to help inform the Board's consideration of the extent to which an award of Fund Benefits would be consistent with the WNYREDC or Finger Lakes REDC strategies and priorities.

Subject to an applicant's compliance with these Procedures, the Board will render a decision on each Application that is submitted. The Board's decision will be reflected in written findings and conclusions. Only Applications for which the Board has made a recommendation concerning an award of Fund Benefits will be forwarded to by NYPA's Board of Trustees for further action. A decision by the Board that an applicant is not an Eligible Applicant or that a project is not an Eligible Project will not be forwarded to NYPA's Board of Trustees for further action.

The Board may, in its discretion, include within any recommendation to NYPA's Board of Trustees proposed terms and conditions relating to any recommended award, including, but not limited to, reasonable provision for the allocation of Fund Benefits over time as the Eligible Applicant achieves milestones toward completion of an Eligible Project, and the partial or complete withdrawal or return of Fund Benefits where an Eligible Applicant has failed to achieve or maintain agreed-upon commitments.


N
W
E
S
LAKE
ONTARIO
LAKE
ERIE
Niagara
County
Orleans
County
Genesee
County
Erie
County
Chautauqua
County
Niagara Power Project
Thirty Mile Zone
Niagara Power Project 30 Mile Buffer
New York
International Boundary
County Boundary
Municipal Boundary
1 inch = 2.25 miles