

**PUBLIC AUTHORITIES LAW**  
**ARTICLE 5. PUBLIC UTILITY AUTHORITIES**  
**TITLE 1. POWER AUTHORITY OF THE STATE OF NEW YORK**

**§ 1000. Short title**

This title may be cited as the "Power Authority Act."

**§ 1001. Declaration of policy**

Those parts of the Niagara and Saint Lawrence rivers within the boundaries of the state of New York are hereby declared to be natural resources of the state for the use and development of commerce and navigation in the interest of the people of this state and the United States. In order to provide for the most beneficial use of these natural resources, for the creation and development of hydroelectric power in the interest of the people of this state, and to preserve and enhance the scenic beauty of the Niagara Falls and river, such natural resources, including the beds and waters of the said rivers as instrumentalities of commerce and navigation, and the beds, waters, power and power sites in, upon or adjacent to or within the watersheds of the said rivers, owned or controlled by the people of the state, or which may hereafter be recovered by or come within their ownership, possession and control, shall always remain inalienable to, and ownership, possession and control thereof shall always be vested in, the people of the state.

It is further declared that the need for obtaining and maintaining a continuous and adequate supply of dependable electric power and energy is a matter of public concern to the people of the state; that the maximum capacity of the hydroelectric developments on the Niagara and Saint Lawrence rivers of the authority can be best utilized and additional public benefit derived therefrom by provision for supplemental base load nuclear generating facilities or facilities utilizing new energy technologies and that for the purposes

- (i) of so utilizing such capacity and of deriving such additional benefit,
- (ii) of providing additional low cost power and energy to attract and expand high load factor industry,
- (iii) of continuing an adequate supply of power and energy for the future needs of its municipal electric systems and rural electric cooperative customers, and
- (iv) of assisting in the development of additional dependable hydroelectric power from other waters of the state and in the development of advanced facilities having substantial prospects of reducing electricity production costs, the public interest requires that the authority participate in the generation of supplemental electric power and energy by energy storage, hydroelectric and nuclear means and new energy technologies to the extent authorized in this title.

It is further declared that there is a shortage of dependable power capacity in the southeastern part of the state and that the public interest requires that the authority assist in alleviating such shortage by providing such base load generating facilities as may be necessary or desirable to contribute to the maintenance of an adequate and dependable supply of electricity for the metropolitan transportation authority, its subsidiary corporations, the New York city transit authority, the port authority of New York and New Jersey, the city of New York, the state of New York, the United States, other public corporations and electric companies within the metropolitan area of the city of New York within the state of New York.

It is further declared

(i) that there should be full cooperation among private and public entities including the authority, municipal corporations and rural electric cooperatives engaged in power generation, transmission and distribution and in associated developmental and service activities,

(ii) that it is desirable that the authority and the utilities which with the authority constitute the New York power pool exchange comparable cost, performance and operating data with respect to generation by nuclear means particularly reflecting the effect of the authority's tax-free status,

(iii) that it is desirable and reasonable that the authority sell power and energy from its projects other than the Niagara and Saint Lawrence hydroelectric projects, not needed for its high load factor industrial, municipal, rural electric cooperative and public transportation customers to other members of the New York power pool for resale without discrimination under their respective tariffs,

(iv) that it is desirable that the authority give its fullest cooperation to the energy research and development authority in advancing and promoting the development and implementation of new energy technologies, and shall fulfill its responsibilities for the development and maintenance of increased base load for New York state to the greatest extent possible by utilizing new energy technologies made available by the energy research and development authority to the extent deemed advisable by the trustees and,

(v) that upon certification by the public service commission of the commercial and economic feasibility of a new electrical energy generating technology the power authority shall, in a manner consistent with its powers and purposes, promptly plan and construct a facility to demonstrate such new technology; except, however, the authority may plan and construct such demonstration facility in the absence of such certification.

### **§ 1001-a. Emergency provisions for the metropolitan area of the city of New York**

The legislature hereby finds and declares that extraordinary circumstances, including excessive costs, shortages of supply, and the inflated price of fuel threaten the capacity to provide utility service essential to the continued safety, health, prosperity and well-being of the people of the metropolitan area of the city of New York and, by reason of the interconnection and interdependence of electric facilities, the reliability of such service throughout the state and require emergency action by the state and its agencies. It is therefore declared that:

1. To preserve reliability of electric service in the metropolitan area of the city of New York and throughout the state and to assist in deterring further extraordinary increases in rates for electric

service the authority should provide such supplemental electricity for such use in the metropolitan area of the city of New York as is consistent with continuing and maintaining the exemption of interest on authority bonds from the income tax imposed by the Internal Revenue Code of the United States and regulations and ruling thereunder.

2. It is essential that such electricity be provided at the earliest practicable time.

3. The authority should be authorized to acquire completed or partially completed generation, transmission and related facilities and fuel and fuel contracts.

4. Any cost savings realized in the production or delivery of electricity by reason of any such acquisition by the authority shall be passed on to consumers.

### **§ 1002. Power Authority of the State of New York**

1. For the purpose of effectuating the policy declared in section one thousand one of this chapter there is hereby created a corporate municipal instrumentality of the state to be known as "Power Authority of the State of New York", in this title referred to as "the authority", which shall be a body corporate and politic, a political subdivision of the state, exercising governmental and public powers, perpetual in duration, capable of suing and being sued, and having a seal, and which shall have the powers and duties hereinafter enumerated, together with such others as may hereafter be conferred upon it by law.

2. It shall report annually to the governor and the legislature upon its operations and transactions. Such annual report shall incorporate the requirements of section two thousand five hundred of this chapter, shall identify the authority by its statutory name, and include a letter of transmittal in the report to the governor and the legislature. The annual report shall also include, but not be limited to, the following:

(a) the amount of power and energy produced by each project facility;

(b) the amount of energy transferred between each project facility for use within the authority's system;

(c) the amount of energy transferred between each project facility for sale outside the authority's system;

(d) the kilowatt-hour sales by project facility and by customer including all intrastate sales to investor-owned electric corporations, municipal electric systems and rural electric cooperatives, and all sales on a temporary (i.e., eighteen months or less) basis;

(e) the revenues and costs as allocated by the authority for each project facility;

(f) the busbar price or prices for power and energy sold to each customer of the authority;

(g) the accumulated provision for depreciation for each project facility; and

(h) basic financial and operating information specifically detailed for the reporting year and including but not limited to income and expense statements, balance sheets, and changes in financial position, all in accordance with generally accepted accounting principles, debt structure and a summary of funds on a cash basis. The requirement to provide information pursuant to this subdivision

is not intended to affect the authority's responsibilities or obligations under this title or under any rate covenant or any pledge of revenues outstanding as of the effective date of the chapter of the laws of nineteen hundred eighty-four which added this sentence to this subdivision.

### **§ 1003. Trustees**

The authority shall consist of seven trustees, five of whom shall serve respectively for terms of one, two, three, four and five years, to be appointed by the governor, by and with the advice and consent of the senate. The sixth and seventh trustees shall be appointed by the governor, by and with the advice and consent of the senate, and shall serve initial terms of one and two years respectively. Each trustee shall hold office until a successor has been appointed and qualified. At the expiration of the term of each trustee and of each succeeding trustee the governor shall, by and with the advice and consent of the senate, appoint a successor, who shall hold office for a term of five years, or until a successor has been appointed and qualified. In the event of a vacancy occurring in the office of the trustee by death, resignation or otherwise, the governor shall, by and with the advice and consent of the senate, appoint a successor, who shall hold office for the unexpired term. Four trustees shall constitute a quorum for the purpose of organizing the authority and conducting the business thereof.

The trustee chosen as chairman as provided in section one thousand four of this title, shall receive an annual salary which shall be set by the trustees of the authority, and which shall not exceed the salary prescribed for the positions listed in paragraph (f) of subdivision one of section one hundred sixty-nine of the executive law. Each other trustee shall not receive a salary or other compensation. Each trustee shall receive his or her reasonable expenses in the performance of his or her duties hereunder. The trustee chosen as chairman may elect to become a member of the New York state and local employees' retirement system on the basis of such compensation to which he or she shall be entitled as herein provided notwithstanding the provisions of any general, special or local law, municipal charter, or ordinance.

### **§ 1004. Officers and employees; expenses**

The trustees shall choose from among their own number a chairman and vice-chairman. They shall select such officers and employees, including a chief executive officer whose appointment shall be subject to confirmation by the senate in accordance with section twenty-eight hundred fifty-two of this chapter, and such engineering, marketing and legal officers and employees, as they may require for the performance of their duties and shall prescribe the duties and compensation of each officer and employee. They shall adopt by-laws and rules and regulations suitable to the purposes of this title. As long as and to the extent that the authority is dependent upon appropriations for the payment of its expenses, it shall incur no obligations for salary, office or other expenses prior to the making of appropriations adequate to meet the same.

## **§ 1005. Powers and duties of authority**

Forthwith upon the appointment and organization of the trustees and subject to the conditions and limitations in this title contained, the authority, in cooperation with the proper Canadian authorities and those of the United States as hereinafter directed, shall proceed with the improvement and development of the Niagara river and the international rapids section of the Saint Lawrence river (which is defined as that part of the said river from Ogdensburg to the point where it leaves the territory of this state) for the aid and benefit of commerce and navigation and for the development of the hydroelectric power inherent therein in accordance with the provisions of this title.

The authority is authorized to procure through a competitive solicitation process power and energy from the competitive market and to construct, improve and/or rehabilitate throughout its area of service (a) such hydroelectric or energy storage projects, as it deems necessary or desirable to contribute to the adequacy, economy and reliability of the supply of electric power and energy or to conserve fuel and (b) such base-load nuclear generating facilities or other facilities utilizing new energy technologies as in its judgment are necessary (i) to supply sufficient supplemental energy to make possible optimum use of the generating capacity of the authority's Saint Lawrence and Niagara hydroelectric projects, (ii) to supply low cost power and energy to high load factor manufacturers which will build new facilities in the authority's area of service or expand existing facilities provided such power and energy is made available to them, and (iii) to supply the future needs of the authority's existing municipal electric and rural electric cooperative customers.

The authority is further authorized to construct and/or acquire and complete such base load generating, transmission and related facilities as it deems necessary or desirable to assist in maintaining an adequate and dependable supply of electricity by supplying power and energy for the metropolitan transportation authority, its subsidiary corporations, the New York city transit authority, the port authority of New York and New Jersey, the city of New York, the state of New York, the United States, other public corporations and electric corporations within the metropolitan area of the city of New York within the state of New York; provided, however, that (i) the acquisition of completed or partially completed facilities shall be after public hearing and shall be limited to facilities located in New York city or Westchester county and the energy and power generated by such facilities shall be used, to the extent feasible, for the benefit of electric consumers in that area, (ii) not more than one such generating facility shall be acquired in each of New York city and Westchester county, (iii) the price to be paid pursuant to any agreement entered into with respect to the purchase, appropriation or condemnation of any such completed or partially completed facility, as the case may be, shall be subject to the approval of the state comptroller and (iv) transmission facilities shall not be so acquired pursuant to this paragraph unless such acquisition is necessary to assure delivery of power and energy produced by any acquired generating facility. The authority is further authorized, to the extent it deems it necessary or desirable, to provide power and energy, as it may determine it to be available, for the use by the Niagara frontier transportation authority or its subsidiary corporation. The authority is authorized to make energy efficiency services, clean energy technologies and, in the event that supplies of power and energy are determined to be available from the competitive market for this purpose, power and energy, available to public and nonpublic elementary and secondary schools throughout the state.

A high load factor manufacturer is one which normally utilizes a minimum electric demand of five thousand kilowatts and which will normally utilize energy at the rate of approximately five hundred forty kilowatt hours per month for each kilowatt of demand and of which the cost of electricity normally represents at least seven and one-half percent of its total product value.

The authority shall publish notice of any proposed allocation of firm power and associated energy except such allocations as are subject to the provisions of section one thousand nine of this chapter, at least thirty days prior to the delivery of any energy pursuant thereto, which notice shall, in the case of industrial allocations, document actions by the authority pertaining thereto including solicitation for competing proposals. In addition, such notice shall be transmitted to the temporary president of the senate, the speaker of the assembly, and the respective fiscal committees of the legislature.

Notwithstanding any inconsistent provision of law, the authority is authorized to enter into contracts prior to July first, nineteen hundred eighty-five to allocate a total of not more than thirty-six megawatts of power and associated energy, available for allocation as a result of voluntary relinquishment by high load factor manufacturers, of such power and associated energy from base load nuclear generating facilities of the authority, to furnish electricity to no more than three customers which:

- (a) are located in the southeastern portion of the state;
- (b) will build new facilities and/or expand existing facilities;
- (c) will expand employment and investment in the state; and
- (d) will normally utilize a minimum peak electrical demand of one thousand kilowatts.

The authority is further authorized to construct such generating, transmission and related facilities within the service area of the Long Island power authority, as the authority, in consultation with and upon such terms and conditions as the Long Island power authority, deems necessary or desirable.

Periodically, but no less often than annually, the authority is authorized and directed to identify the net revenues produced by the sale of expansion power and further to identify an amount of the net revenues from the sale of expansion power which amount shall be used solely for industrial incentive awards. Notwithstanding other lawful purposes for which such revenues may be used, it shall be the preferred purpose of the authority to make available all such net revenues for industrial incentive awards. Provided, however, that industrial incentive awards shall be made only in conformance with an economic development plan covering all such net revenues which is submitted no less often than annually by the authority and approved pursuant to section one hundred eighty-eight of the commerce law. For purposes of this paragraph, the term net revenues shall mean any excess of revenues properly allocated to the sales of expansion power over costs and expenses properly allocated to such sales.

a. [Until June 30, 2012 (see 1997 note below), ninth undesignated par reads as follows:] Notwithstanding any inconsistent provision of this title, the authority shall make available all economic development power for allocation to or for businesses and whose allocation of such power is recommended by the New York state economic development power allocation board pursuant to section one hundred eighty-seven of the economic development law. "Economic development power" shall

mean any power that is voluntarily relinquished by businesses to the authority, except that it shall not include any power from the Niagara or Saint Lawrence-FDR projects or power under the power for jobs program which may be voluntarily relinquished by businesses, small businesses and not-for-profit corporations.

b. Notwithstanding any inconsistent provision of this title, the authority shall make available all power under the power for jobs program for allocation to or for businesses, small businesses and not-for-profit corporations and whose allocation of such power is recommended by such board pursuant to section one hundred eighty-nine of the economic development law. Power under the power for jobs program shall mean four hundred fifty megawatts of power in the initial three phases of the program, three hundred megawatts of power in the fourth phase of the program, and one hundred eighty-three megawatts in the fifth phase of the program. The authority shall provide the least cost power available acquired through a competitive procurement process, from authority sources, or through an alternate method. The authority shall conduct a competitive procurement process and may provide power through an alternate method if the cost is lower than the cost of power obtained through a competitive procurement process; provided, however, that the use of such lower cost power from authority sources shall not reduce the availability of, or cause an increase in the price of, power provided by the authority for any other program authorized in this article or pursuant to any other statute. Such competitive procurement process shall be established by the economic development power allocation board, in consultation with the department of public service, and implemented by the authority. Notwithstanding the foregoing, the power to be provided by the authority for the fifth phase of the power for jobs program shall include, for the purpose of determining the total amount of power to be delivered to recipients, power provided to program participants by other suppliers under the energy service company option pursuant to paragraph four of subdivision a of section one hundred eighty-nine of the economic development law. For the purposes of this paragraph and subdivision fourteen of this section, "local distributor of electric service" shall mean an electric corporation as defined in subdivision thirteen of section two of the public service law that was a member of the New York power pool on January first, nineteen hundred ninety-five, or its successor in interest.

c. The authority shall enter into contracts for purchase of power during the fourth and fifth phases of the power for jobs program that provide for delivery of power no sooner than January first, two thousand one with respect to phase four, January first, two thousand two with respect to phase five of the program, and December first, two thousand four with respect to extensions of phase four and phase five contracts. If the authority declines to make power available to or for a business or not-for-profit corporation whose allocation has been so recommended, the authority shall decline within the period specified by the board in its recommendation and shall issue in writing a statement of reasons for such denial.

d. The authority shall report quarterly to the New York state economic development power allocation board on the anticipated availability of economic development power and power under the power for jobs program for the subsequent twelve-month period.

e. When the authority determines that economic development power or power under the power for jobs program is available, the authority shall notify the New York state economic development power allocation board.

f. The authority shall provide for the sale of power to its economic development power customers at a uniform non-discriminatory rate. The authority shall provide for the sale of power from authority sources, power acquired through a competitive procurement process established by the New York state economic development power allocation board, or power provided by the authority through an alternate method to local distributors of electric service for businesses and not-for-profit corporations receiving allocations of power under the power for jobs program at a rate that shall combine the rate set for power from authority sources and the actual cost of power obtained through the competitive procurement process or from an alternate method, with no mark-up; provided however, that prior to the time when power is available through the competitive procurement process, the authority shall provide power under the power for jobs program at the rate set for power from authority sources.

g. 1. The authority is authorized, as deemed feasible and advisable by the trustees, to use revenues from the sale of power from the Fitzpatrick nuclear project under the initial three phases of the power for jobs program established pursuant to chapter three hundred sixteen of the laws of nineteen hundred ninety-seven, to the extent such revenues exceed revenues from the sale of such power in the calendar year prior to the effective date of chapter three hundred sixteen of the laws of nineteen hundred ninety-seven, to make a voluntary contribution no later than sixty days after the end of the state fiscal year into the state treasury to the credit of the general fund.

2. The authority, as deemed feasible and advisable by the trustees, is authorized to make payments to recipients of the power for jobs electricity savings reimbursements and additional annual voluntary contributions into the state treasury to the credit of the general fund. The authority shall make such contributions to the state treasury no later than ninety days after the end of the calendar year in which a credit under subdivision nine of section one hundred eighty-six-a of the tax law is available: (a) for the additional three hundred megawatts of power under the fourth phase of the program provided under chapter sixty-three of the laws of two thousand and under the fifth phase for the additional one hundred eighty-three megawatts provided under chapter two hundred twenty-six of the laws of two thousand two; and (b) for any extension of any contract for allocations under the fourth phase of the program and under the fifth phase of the program. Payments for any electricity savings reimbursement under section one hundred eighty-nine of the economic development law shall be made pursuant to such section. Such annual contributions shall be equal to fifty percent of the total amount of such credits available each year to all local distributors of electricity. In addition, such authorization for contribution in state fiscal year two thousand two-two thousand three shall be equal to the total amount of credit available in two thousand one and two thousand two; and such authorization for contribution in state fiscal year two thousand three-two thousand four shall be equal to the total amount of credit available in two thousand three; under subdivision nine of section one hundred eighty-six-a of the tax law under the fourth phase of the program for the additional three hundred megawatts provided under chapter sixty-three of the laws of two thousand and under the fifth phase for the additional one hundred eighty-three megawatts provided under chapter two hundred twenty-six of the laws of two thousand two. In state fiscal year two thousand four-two thousand five, such authorized annual contribution shall be equal to one hundred percent of the total amount of such credits available each year to all local distributors of electricity. Such authorization for contribution in state fiscal years two thousand four and two thousand five shall be equal to the total amount of credit available in two thousand four and two thousand five; under subdivision nine

of section one hundred eighty-six-a of the tax law under the fourth phase of the program for the additional three hundred megawatts provided under chapter sixty-three of the laws of two thousand and under the fifth phase for the additional one hundred eighty-three megawatts provided under chapter two hundred twenty-six of the laws of two thousand two. In addition, such authorization for contribution for any extension of any contract for allocations under the fourth phase of the program and under the fifth phase of the program in each state fiscal year shall be equal to the total amount of credit or reimbursement available in state fiscal year two thousand four-two thousand five, state fiscal year two thousand five-two thousand six and two thousand six-two thousand seven. Additionally, notwithstanding any other section of law, the authority is authorized to make a contribution in an amount related to total amounts of credit received under phases one, two, three, four and five of the program. In no case shall the contribution for state fiscal year two thousand five-two thousand six be less than seventy-five million dollars. The contribution for state fiscal year two thousand six-two thousand seven shall be one hundred million dollars. The contribution for state fiscal year two thousand seven-two thousand eight shall be thirty million dollars. The contribution for state fiscal year two thousand eight-two thousand nine shall be twenty-five million dollars. The contribution for state fiscal year two thousand nine-two thousand ten shall be twelve million five hundred thousand dollars. The contribution for state fiscal year two thousand ten-two thousand eleven shall be seven and one-half million dollars. The contribution for state fiscal year two thousand eleven-two thousand twelve shall be six million dollars. The department of public service shall estimate the payment due by the end of the calendar year in which the credit is available. In no case shall the amount of the total annual contributions for the years during which delivery and sale of power associated with all power for jobs phases and any extensions thereof takes place exceed the aggregate total of four hundred seventy-five million dollars.

3. Other authority customers shall not incur any costs in the implementation of the power for jobs program.

h. For the purposes of paragraphs b and f of this ninth undesignated paragraph, "authority sources" shall be defined as power and energy supplied by generating facilities of the authority in operation or under construction as of the effective date of this paragraph and power and energy procured by competitive solicitation; provided, however, that it shall not include power from the Niagara and Saint Lawrence-FDR power projects, except this shall not preclude the use of proceeds from the sale of power from such projects for energy cost savings benefits as provided herein.

[Eff June 30, 2012 (see 1997 note below), ninth undesignated par reads as follows:] Notwithstanding any inconsistent provision of this title, the authority shall make available all economic development power for allocation to or for businesses whose allocation of such power is recommended by the New York state economic development power allocation board pursuant to section one hundred eighty-seven of the commerce law. If the authority declines to make power available to or for a business whose allocation has been so recommended, the authority shall decline within the period specified by the board in its recommendation and shall issue in writing a statement of reasons for such denial.

a. Economic development power shall mean any power generated at the Fitzpatrick nuclear project that is voluntarily relinquished by businesses.

b. The authority shall report quarterly to the New York state economic development power allocation board on the anticipated availability of economic development power for the subsequent twelve-month period.

c. When the authority determines that economic development power is available, the authority shall notify the New York state economic development power allocation board.

d. The authority shall provide for the sale of power from the Fitzpatrick nuclear project to its industrial, business, and economic development power customers at a uniform non-discriminatory rate.

The authority is further authorized, as deemed feasible and advisable by the trustees, to acquire, maintain, manage, operate, improve and reconstruct as a project or projects of the authority one or both of the steam generation facilities owned by the state known as the Sheridan avenue steam generating plant on Sheridan avenue in the city of Albany and used to supply steam to state facilities, together with any properties, buildings and equipment at the sites thereof or ancillary thereto, for the generation and sale of thermal energy and the cogeneration and sale of electricity for use by facilities of the state within the county of Albany. All the authority's costs, including its acquisition, capital, operating and maintenance costs, shall be recovered fully from the customers receiving service from such project or projects. Thermal energy and electricity not required by the state may be sold by the authority to others. The authority is not authorized to use refuse or refuse-derived fuel in operating the project or projects. Any agreement for such acquisition shall insure that the authority is not liable or otherwise responsible for circumstances arising from the prior operation of such facilities. The acquisition and purchase of such land, buildings and equipment by the authority, and any actions taken to effect such acquisition and purchase, are hereby exempt from the provisions of article eight of the environmental conservation law. The application of such exemption shall be strictly limited to the acquisition and purchase of such land, buildings and equipment by the authority and such agreements with the state. Nothing herein shall exempt the authority from otherwise applicable laws respecting the expansion, conversion, operation and maintenance of such land, buildings and equipment.

The authority is authorized and directed:

1. To cooperate with the appropriate agencies and officials of the United States government to the end that any hydroelectric project on the Niagara or Saint Lawrence rivers undertaken under this title shall be consistent with and in aid of any plans of the United States for the improvement of commerce and navigation along such rivers and shall be so planned and constructed as to be adaptable to the plans of the United States therefor, so that the necessary channels, locks, canals, and other navigational facilities may be constructed and installed by the United States, in, through, and as part of such project.

2. To negotiate with the appropriate Canadian authorities and agencies respecting the improvement and development of the Niagara river, and international rapids section of the Saint Lawrence river for the aid and benefit of commerce and navigation and the development of hydro-electric power therefrom, and to plan and agree with them upon cooperative action to that end including any shifting of international boundary lines between Canada and the United States and upon the use, control and disposition of the facilities [facilities] to be created and the hydro-electric power to be developed by any project constructed in such rivers. Such negotiations and agreements shall be conducted and concluded with due regard to the position of the United States in respect to international agree-

ments, and any such agreements as may be reached with Canadian authorities or agencies may be submitted by the authority to congress for its approval, if it be advised that such approval is necessary or desirable.

3. To apply to the appropriate agencies and officials of the United States government and/or of Canada or its provinces, including the federal power commission, the atomic energy commission, and the international joint commission, for such licenses, permits or approval of its plans or projects as it may deem necessary or advisable, and in its discretion, and upon such terms and conditions as it may deem appropriate, to accept such licenses, permits or approvals as may be tendered to it by such agencies or officials and such federal or other public or governmental assistance as is now or may hereafter become available to it; and to enter into contracts with such agencies or officials or utility companies relating to the construction or operation of any project authorized by this title. Neither the authority nor any trustee, officer or agent thereof shall have any power to waive or surrender for any purpose whatsoever any right of the state of New York, whether sovereign or proprietary in character, in and to the Niagara and Saint Lawrence rivers, their waters, power, channels, beds, or uses, or the right of the state to assert such rights at any future time; provided, however, that nothing herein contained shall be construed as limiting the power of the authority to accept licenses issued by the federal power commission pursuant to the provisions of the federal power act, as amended, or by the atomic energy commission pursuant to the provisions of the atomic energy act of 1954, as amended, and the terms and conditions therein imposed pursuant to law. If for any reason the authority shall fail to secure any such license, permit or approval as it may deem necessary or advisable, or shall decide not to make application therefor, it is authorized to institute suit, or to apply to congress for legislation, or take such other action in the premises as it may deem necessary or advisable, in the furtherance of the project and for the protection of its rights and those of the state.

4. To study the desirability and means of attracting industry to the state of New York.

5. To develop, maintain, manage and operate those parts of the Niagara and Saint Lawrence hydro-electric projects owned or controlled by it in such manner as to give effect to the policy hereby declared (and all plans and acts, and all contracts for the use, sale, transmission and distribution of the power generated by such projects, shall be made in the light of, consistent with and subject to this policy), namely, that such projects shall be in all respects for the aid, improvement, and benefit of commerce and navigation in, through, along and past the Niagara river, the Saint Lawrence river and the international rapids section thereof, and that in the development of hydro-electric power therefrom such projects shall be considered primarily as for the benefit of the people of the state as a whole. In furtherance of this policy and to secure a wider distribution of such power and use of the greatest value to the general public of the state, the authority shall in addition to other methods which it may find advantageous make provision so that municipalities and other political sub-divisions of the state now or hereafter authorized by law to engage in the distribution of electric power may secure a reasonable share of the power generated by such projects, and shall sell the same or cause the same to be sold to such municipalities and political subdivisions at prices representing cost of generation, plus capital and operating charges, plus a fair cost of transmission, all as determined by the trustees, and subject to conditions which shall assure the resale of such power at the lowest possible price, provided, however, that in disposing of hydro-electric power pursuant to and in furtherance of the aforementioned policy and purposes, appropriate provision may also be

made to allocate a reasonable share of project power to agencies created or designated by other states and authorized to resell the power to users under the same terms and conditions as power is disposed of in New York state. To that end, the authority may provide in any contract or contracts which it may make for the sale, transmission and distribution of the power that the purchaser, transmitter or distributor shall construct, maintain and operate, on such terms as the authority may deem proper, such connecting lines as may be necessary for transmission of the power from main transmission lines to such municipalities or political subdivisions.

Contracts for the sale, transmission and distribution of power generated by such projects shall provide for the effectuation of the foregoing policy and shall provide:

- a. Payment of all operating and maintenance expenses of the project.
- b. Interest on and amortization and reserve charges sufficient within fifty years of the date of issuance to retire the bonds of the power authority issued for the project.
- c. Continuous control and operation of the project by the authority.
- d. The effectuation of the policy declared in this sub-paragraph.
- e. Full and complete disclosure to the authority of all factors of cost in the transmission and distribution of power, so that rates to consumers may be fixed initially in the contract and may be adjusted from time to time on the basis of true cost data, provided that in fixing such cost of transmission and distribution no account shall be given to any franchise value, going value or good-will based upon the existence of the contract and the availability of the power for sale by the transmitting or distributing company or any company associated therewith.
- f. Periodic revisions of the service and rates to consumers on the basis of accurate cost data obtained by such accounting methods and systems as shall be approved by the trustees and in furtherance and effectuation of the policy declared in this sub-paragraph.
- g. That the rates, services and practices of the purchasing, transmitting and/or distributing public agencies or companies in respect to the power generated by such projects shall be governed by the provisions and principles established in the contract, and not by regulations of the public service commission or by general principles of public service law regulating rates, services and practices and that in the event any such public agencies or companies which purchase power from the authority shall sell any such power for resale, such sale for resale shall be made at rates no higher than those at which the power was purchased from the authority.
- h. The rate structures agreed upon in such contract may provide different rates for different localities, classes of consumers, and amounts of current consumed, and for changes in the rates resulting from variation in operating costs and fixed charges.
- i. For the cancellation and termination of any such contract upon violation of the terms thereof by the purchasing, transmitting or distributing public agency or company, or any subsidiary or associate thereof.
- j. For such security for performance as the authority may deem practicable and advisable, including provisions assuring the continuance of service by the purchasing, transmitting and/or distributing public agencies or companies and/or the use of their facilities for such service and/or the continuance of an outlet and adequate market for the power generated by such projects.
- k. Such other terms not inconsistent with the provisions and policy of this title as the authority may deem advisable.

6. To develop, maintain, manage and operate its projects other than the Niagara and Saint Lawrence hydroelectric projects so as (i) to provide an adequate supply of energy for optimum utilization of its hydroelectric projects, (ii) to attract and expand high load factor industry, (iii) to provide for the

additional needs of its municipal electric and rural electric cooperative customers, (iv) to provide a supply of power and energy for use in the recharge New York power program as recharge New York market power, and (v) to assist in maintaining an adequate, dependable electric power supply for the state.

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

- a. Payment of all operating and maintenance expenses of the projects.
- b. Interest on and amortization and reserve charges sufficient within fifty years of the date of issuance to retire the bonds of the authority issued for the projects.
- c. For the cancellation and termination of any such contract upon violation of the terms thereof by the purchasing, transmitting or distributing public agency or company, or any subsidiary thereof.
- d. That the rates, services and practices of the purchasing, transmitting and/or distributing public agencies and rural electric cooperatives in respect to the power and energy from such projects shall be governed by the provisions and principles established in the contract, and not by regulations of the public service commission or by general principles of public service law regulating rates, services and practices and that in the event any such public agencies or cooperatives which purchase power from the authority shall sell any such power for resale, such sale for resale shall be made at rates no higher than those at which the power was purchased from the authority.
- e. In the case of a contract with an electric corporation entered into on or after May first, nineteen hundred seventy-four (i) for assurances by the electric corporation of prompt and timely payment of all bills rendered by the authority and that failure to make such prompt and timely payment shall be grounds for immediate termination of the contract, and (ii) that in the event the contract is so terminated, the electric company will wheel to such purchasers as the authority may direct the power and energy that would have been sold to the electric company had the contract not been terminated.
- f. Such other terms not inconsistent with the provisions and policy of this title as the authority may deem advisable.

7. To proceed with the physical construction or completion of any project authorized by this title, including the erection of the necessary dams, power houses and other facilities, instrumentalities and things necessary or convenient to that end, and including also the erection of such transmission lines as may be necessary to conduct electricity to users located at or near the site; and including also the acquisition, by contract only with the owners thereof, of transmission lines or the use of such transmission lines, available or which may be made available, to conduct electricity to such point or points at which the electricity is sold by the authority to any person, corporation or association, public or private, engaged in the business of distribution and sale of electricity to ultimate consumers or if the authority is unable to so acquire by contract the ownership or use of such transmission lines, including also the erection by the authority of transmission lines necessary for such purposes; and thereafter to maintain and operate the project in accordance with the provisions and policy of this title. The authority is specifically authorized to undertake the construction of any project in one or more steps as it may find economically desirable or advantageous, and as it may agree with the appropriate Canadian and/or United States authorities. Whenever in this title reference is made to "project", it shall be understood to refer to such part of any project authorized by this title as may from time to time be in existence or immediately projected.

8. To cooperate with and, when the trustees deem it feasible and advisable, to enter into contractual arrangements with utility companies;

a. With respect to construction and operation of pumped storage facilities by the authority and supply of all or part of the necessary pumping energy by the utilities and their purchase of all or part of the output.

b. With respect to construction, completion, acquisition, ownership and/or operation of base-load generating facilities, fuel, docks, sidings, loading or unloading equipment, storage facilities and other subsidiary facilities and disposition of the output of such generating facilities.

c. With respect to construction, acquisition, ownership, operation and/or use of transmission facilities.

9. To cooperate with and, when the trustees deem it feasible and advisable, to enter into contractual arrangements with municipal corporations with respect to construction, improvement, rehabilitation, ownership and/or operation of hydroelectric generating facilities and subsidiary facilities and disposition of the output of such generating facilities.

10. To cooperate with and, when the trustees deem it feasible and advisable, to enter into contractual arrangements with New York state energy research and development authority in connection with the planning, siting, development, construction, operation and maintenance of generating facilities of the authority utilizing new energy technologies to the extent such action is consistent with the purposes and powers granted by law to New York state energy research and development authority.  
10-a.

a. To cooperate with and, when the trustees deem it feasible and advisable, enter into contracts with an owner or operator of a "class A" multiple dwelling, as defined in subdivision eight of section four of the multiple dwelling law, to administer and finance programs for the development, design, installation and provision of financial assistance with respect to the replacement of refrigerators with more energy efficient refrigerators; provided that no costs associated with such financial assistance shall be charged to the authority's customers. Financial assistance shall be repaid to the authority, over a period not to exceed ten years, based on projected savings in energy costs and related costs which accrue to the owner as a result of installing such measures and consistent with paragraph b of this subdivision.

b. If the owner of such multiple dwelling is a customer of the authority or of an electric corporation, as defined in subdivision thirteen of section two of the public service law, and if the refrigerator is provided by the owner, and if charges for electricity are included within the rent that the tenant pays to occupy such dwelling, the owner of such dwelling shall repay the authority for such financial assistance based on projected savings in energy costs that are estimated to accrue to the owner as a result of such replacement. As a condition of participating in the program established by this subdivision, such owner shall agree to be precluded from charging any additional fee or collecting any rent increase to such tenant as a result of such replacement.

11. To exercise all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this title; and as incidental thereto to own, lease, build, operate, maintain and dispose of real and personal property of every kind and character, to acquire real property and any or every interest therein for its lawful purposes by purchase, or by condemnation as hereinafter provided, to borrow money and secure the same by bonds or liens upon revenue from any property or contracts

held or to be held by it, to sell water or electric power, and generally to do any and every thing necessary or convenient to carry out the purposes of this title, provided that the authority shall have no power at any time to pledge the credit of the state nor shall any of its obligations or securities be deemed to be obligations of the state nor shall the authority have the power to lease or sell any dam, or power house at the site.

12. Notwithstanding any limitations hereinbefore expressed, the authority is authorized and directed forthwith or from time to time as it shall deem advisable and within the limitations of the appropriations made available for it to initiate and prosecute all inquiries, investigations, surveys and studies which it may deem necessary or desirable as preliminary to the effectuation of the other powers and duties conferred upon it by this title.

13. Notwithstanding any other provision of law to the contrary but subject to the terms and conditions of federal energy regulatory commission licenses, to allocate or reallocate directly or by sale for resale, two hundred fifty mega-watts of firm Niagara project hydroelectric power as "expansion power" and four hundred forty-five megawatts of firm Niagara project hydroelectric power as "replacement power" to businesses within the state located within thirty miles of the Niagara project, and four hundred ninety megawatts of firm and interruptible power from the Saint Lawrence-FDR project as "preservation power" sold to businesses located within the counties of Jefferson, Saint Lawrence and Franklin, provided that the amount of expansion power allocated to businesses in Chautauqua county on January first, nine-teen hundred eighty-seven shall continue to be allocated in such county and, provided further that up to seventy mega-watts of replacement power, up to thirty-eight and six-tenths megawatts of preservation power from the Saint Lawrence-FDR project which is relinquished or withdrawn after the effective date of chapter three hundred thirteen of the laws of two thousand five which amended this subdivision and, for the period ending on December thirty-first, two thousand six, up to twenty megawatts of other power from the Saint Lawrence-FDR project which is unallocated as of the effective date of chapter three hundred thirteen of the laws of two thousand five which amended this subdivision, shall be allocated by the authority together with such other funds of the authority as the trustees deem feasible and advisable for energy cost savings benefits and for western New York economic development fund benefits pursuant to the eleventh undesignated paragraph of this section. Provided, however, that the amount of replacement, preservation power, or the additional twenty megawatts of Saint Lawrence-FDR power for the period ending December thirty-first, two thousand six made available for such purpose, used for energy cost savings benefits that are relinquished by or withdrawn from a recipient thereof shall be offered by the authority proportionately for a period of six months for reallocation to applicants who qualify respectively for replacement or preservation power allocations as provided in this subdivision. If such power is not allocated within such period it shall be allocated for the purpose of energy cost savings benefits pursuant to subdivision (h) of section one hundred eighty-three of the economic development law. The authority shall negotiate contracts on reasonable terms and conditions to renew or extend every permanent contract allocation of expansion power in effect on the effective date of this subdivision and, to the extent consistent with such contracts, the authority shall negotiate contracts on reasonable terms and conditions to extend or renew all other allocations or allotments of such power in effect on such date. The authority shall negotiate contracts on reasonable terms and conditions to renew or extend for a period of at least five years every permanent contract allocation of replacement power in effect on the effective date of chapter three hundred thirteen of the laws of two thousand five which added this sentence and that would expire by its terms on or

before the end of the initial federal energy regulatory commission license for the Niagara project; provided that, in negotiating the terms and conditions of such contracts, the authority may consider a business' compliance with all current contractual obligations, including employment and power usage commitments. Contracts entered into pursuant to this subdivision shall contain reasonable provisions providing for the partial or complete withdrawal of the power in the event the recipient fails to maintain mutually agreed levels of employment, investment, and power utilization. Expansion or replacement power relinquished by businesses or withdrawn by the authority shall be allocated directly or by sale for resale by the authority to businesses within the state located within thirty miles of the Niagara project provided, that the proceeds from the sale of such unallocated and allocated, but relinquished or withdrawn or currently not accessed expansion or replacement power, as shall be determined by the trustees, shall be allocated for the purposes of western New York economic development fund benefits pursuant to the eleventh undesignated paragraph of this section. Proceeds to such western New York economic development fund shall not preclude the authority from allocating expansion or replacement power to eligible companies under the provisions of this section. The amount of power allocated to businesses in Chautauqua county on January first, nineteen hundred eighty-seven shall be allocated in such county. Preservation power that is relinquished by businesses or withdrawn by the authority shall be allocated directly or by sale for resale by the authority within the counties of Jefferson, Saint Lawrence and Franklin. Allocations made pursuant to this paragraph shall be made in accordance with criteria established by the trustees. Such criteria shall address the expansion of industry and employment pursuant to paragraph (a) of this subdivision and the revitalization of existing industry pursuant to paragraph (b) of this subdivision.

(a) Criteria for eligibility for expansion, replacement and preservation power. Each application for an allocation for expansion, replacement or preservation power shall be evaluated by the trustees under criteria which shall include but need not be limited to:

- (1) the number of jobs created as a result of a power allocation;
- (2) the business' long term commitment to the region as evidenced by the current and/or planned capital investment in business' facilities in the region;
- (3) the ratio of the number of jobs to be created to the amount of power requested;
- (4) the types of jobs created, as measured by wage and benefit levels, security and stability of employment;
- (5) the amount of capital investment, including the type and cost of buildings, equipment and facilities to be constructed, enlarged or installed;
- (6) the extent to which a power allocation will affect the overall productivity or competitiveness of the business and its existing employment;
- (7) the extent to which an allocation of power may result in a competitive disadvantage for other business in the state;
- (8) the growth potential of the business facility and the contribution of economic strength to the area in which the business facility is or would be located;
- (9) the extent of the business' willingness to make jobs available to persons defined as eligible for services under the federal job training partnership act of nineteen hundred eighty-two and the extent of the business' willingness to satisfy affirmative action goals;
- (10) the extent to which an allocation of power 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; and

(11) the impact of the allocation on the operation of any other facilities of the business, on other businesses within the region, and upon other electric ratepayers.

(b) Revitalization. In addition to the criteria provided in paragraph (a) of this subdivision the trustees shall establish special criteria for the evaluation of applications for power allocated for the revitalization of industry. Such criteria shall include, but need not be limited to:

(1) that the business is likely to close, partially close or relocate resulting in the loss of a substantial number of jobs;

(2) that the business is an important employer in the community and efforts to revitalize the business are in long-term interests of both employers and the community;

(3) that a reasonable prospect exists that the proposed allocation of power will enable the business to remain competitive and become profitable and preserve jobs for a substantial period of time;

(4) that the applicant demonstrates cooperation with the local electricity distributor and other available sources of assistance to reduce energy costs to the maximum extent practicable, through conservation and load management; and

(5) that the allocation will not unduly affect the cost of electric service to customers of the local electricity distributor.

#### 13-a. Recharge New York power program.

(a) Notwithstanding any other provision of law to the contrary, but subject to the terms and conditions of federal energy regulatory commission licenses, to allocate, reallocate or extend, directly or by sale for resale, up to nine hundred ten megawatts of recharge New York power to eligible applicants located within the state of New York upon the recommendation of the New York state economic development power allocation board pursuant to section one hundred eighty-eight-a of the economic development law.

(b) Recharge New York power shall mean and consist of equal amounts of (1) four hundred fifty-five megawatts of firm hydroelectric power from the Niagara and Saint Lawrence hydroelectric projects to be withdrawn, as of the earliest date such power may be withdrawn consistent with contractual requirements, from utility corporations that, prior to the effective date of this subdivision, purchased such power for the benefit of their domestic and rural consumers ("recharge New York hydropower"), and (2) power procured by the authority through market sources, a competitive procurement process, or authority sources (other than the Niagara and Saint Lawrence projects) (collectively or individually, "recharge New York market power"); provided, however, that if such recharge New York market power comes from authority sources, the use of that power shall not reduce the availability of, or cause an increase in the price of, power provided by the authority for any other program authorized in this article or pursuant to any other statute.

(c) Notwithstanding section one thousand nine of this title or any other provision of law to the contrary, the authority is authorized, beginning July first, two thousand twelve, to make available, contract with and sell to such eligible applicants as are recommended by the economic development power allocation board up to nine hundred ten megawatts of recharge New York power for recharge New York power allocations. A recharge New York power allocation shall consist of equal parts of recharge New York hydropower and recharge New York market power as such terms are defined in paragraph (b) of this subdivision; provided, however, that prior to entering into a contract with an eligible applicant for the sale of recharge New York power, and prior to the provision of electric service relating to the recharge New York power allocation, the authority shall offer each eligible applicant the option to decline to purchase the recharge New York market power component of such

allocation. If an eligible applicant declines to purchase such market power from the authority, the authority shall have no responsibility for supplying such market power to the eligible applicant.

### 13-b. Residential consumer discount programs.

(a) Residential consumer electricity cost discount. Notwithstanding any provision of this title or article six of the economic development law to the contrary, the authority is authorized, as deemed feasible and advisable by the trustees, to use revenues from the sale of hydroelectric power, and such other funds of the authority as deemed feasible and advisable by the trustees, to fund monthly payments to be made for the benefit of such classes of electricity consumers as enjoyed the benefits of authority hydroelectric power withdrawn pursuant to subdivision thirteen-a of this section, for the purpose of mitigating price impacts associated with the reallocation of such power in the manner described in this subdivision. Such monthly payments shall commence after such hydroelectric power is withdrawn. The total annual amount of monthly payments for each of the three twelve month periods following withdrawal of such hydroelectric power shall be one hundred million dollars. The total annual amount of monthly payments for each of the two subsequent twelve month periods shall be seventy million dollars and fifty million dollars, respectively. Thereafter, the total annual amount of monthly payments for each twelve month period shall be thirty million dollars. The total amount of monthly payments shall be apportioned by the authority among the utility corporations that, prior to the effective date of this subdivision, purchased such hydroelectric power for the benefit of their domestic and rural consumers according to the relative amounts of such power purchased by such corporations. The monthly payments shall be credited to the electricity bills of such corporations' domestic and rural consumers in a manner to be determined by the public service commission of the state of New York. The monthly credit provided by any such corporation to any one consumer shall not exceed the total monthly electric utility cost incurred by such consumer.

#### (b) Agricultural consumer electricity cost discount.

(1) Beginning with the second twelve month period after such hydroelectric power is withdrawn, up to eight million dollars of the residential consumer electricity cost discount established by paragraph (a) of this subdivision shall be dedicated for monthly payments to agricultural producers who receive electric service at the residential rate. The total amount of monthly payments shall be apportioned by the authority among the utility corporations in the same manner as they are apportioned in paragraph (a) of this subdivision. Monthly payments shall be credited to the electricity bills of such corporations' agricultural consumers in a manner to be determined by the public service commission of the state of New York. The combined monthly credit, under this paragraph and paragraph (a) of this subdivision, provided by any such corporation to any one consumer shall not exceed the total monthly electric utility cost incurred by such consumer.

(2) The authority shall work cooperatively with the department of public service to evaluate the agricultural consumer electricity cost discount, which shall include an assessment of the benefits to recipients compared to the benefits the recipients received from the authority's hydroelectric power, withdrawn pursuant to subdivision thirteen-a of this section, during the twelve month period ending December thirty-first, two thousand ten, and compared to other agricultural consumers that did not choose to receive the discount.

#### (c) Energy efficiency program.

(1) Beginning with the withdrawal of such hydroelectric power, the authority or the New York state energy research and development authority, shall conduct an energy efficiency program for five years to provide energy efficiency improvements for the purpose of reducing energy con-

sumption for domestic and rural consumers. Such energy efficiency program may be undertaken in cooperation with other energy efficiency programs offered by utility corporations, state agencies and authorities including but not limited to the New York state energy research and development authority; provided however that energy savings attributable to such other energy efficiency programs shall not be included in determining the amount of energy saved pursuant to the program established by this paragraph;

(2) The authority or the New York state energy research and development authority shall annually post on their website a report evaluating the energy efficiency program, including but not limited to, the number of domestic and rural consumers who opted to participate in the program and, if practicable, the estimated savings the domestic and rural consumers received by participating in the energy efficiency program.

14. [Until June 30, 2012 (see 1997 note below)]

a. To provide to the governor, to the speaker of the assembly, and to the temporary president of the senate, on or before April first of each year, an economic development report including projections for the next succeeding twelve months of the amount of economic development power, expansion power, replacement power, preservation power, high load factor power, municipal distribution agency power and power under the power for jobs programs which will be or is expected to be available with a listing of the current recipients of such power, and data on the number and types of jobs resulting from allocation of power under each such program. Such report shall include the amount of revenues collected and used in the previous calendar year pursuant to the eighth unnumbered paragraph of this section. Such report shall describe the process by which the authority obtained lowest cost power made available under the power for jobs program. Such report shall contain a record of wholesale power supply bids provided to the authority under a competitive procurement process and the price of power obtained through any alternate methods. Such report shall state the reasons for choosing each specific source of power under each of the foregoing power programs and the price at which that power was available.

b. To provide to the governor, to the speaker of the assembly, and to the temporary president of the senate on or before December first, two thousand, a report on the power for jobs program. Such report shall include the amount of power provided under the program, number of jobs created and number of jobs retained as a result of allocations of power under the program, and number of jobs per megawatt of power provided. Such report shall separately list such information for the state, businesses, small businesses, not-for-profit corporations, and service territory of each local distributor of electric service. Such report shall also include an evaluation with regard to the need for continuation of economic development programs, including the power for jobs program.

14. [Eff June 30, 2012] To provide to the governor, to the speaker of the assembly, and to the temporary president of the senate, on or before April first of each year, an economic development report including projections for the next succeeding twelve months of the amount of economic development power which will be or is expected to be available with a listing of the current recipients of that power, and data on the number and types of jobs resulting from allocation of economic development power. Such report shall also include the amount of revenues collected and used in the previous calendar year pursuant to the eighth unnumbered paragraph of this section.

15. To provide low cost electricity, as well as energy efficiency and conservation services and facilities using conventional or new energy technologies, to the following military establishments within

the state: Fort Drum, Fort Hamilton, United States Academy at West Point, Watervliet Arsenal, Niagara Falls Air Reserve Base, Air Force Research Laboratory at Rome, Defense Finance Accounting Services at the former Rome Air Force Base, North East Air Defense Sector, Stewart Air National Guard Base, Hancock Field Air National Guard Base, Stratton Air National Guard Base and Air National Guard Base at Francis S. Gabreski Airport. Services provided pursuant to this section shall be provided only to support United States Department of Defense activities as they are conducted at such facilities. The authority may enter into contracts with the United States, its agencies and instrumentalities, and other public and private entities to effectuate the foregoing.

16. To complete a biennial energy plan in accordance with the provisions of article six of the energy law. In addition to any requirements of article six of the energy law, the authority shall provide copies of its biennial energy plan to the governor, the temporary president of the senate, the speaker of the assembly, the chair of the assembly committee on energy and the chair of the senate committee on energy and telecommunications. Further, the authority shall cooperate and participate in the state energy planning procedures as enumerated in article six of the energy law.

17.

(a) As deemed feasible and advisable by the trustees, to finance and design, develop, construct, implement, provide and administer energy-related projects, programs and services for any public entity, any independent not-for-profit institution of higher education within the state, and any recipient of the economic development power, expansion power, replacement power, preservation power, high load factor power, municipal distribution agency power, power for jobs, and recharge New York power programs administered by the authority. In establishing and providing high performance and sustainable building programs and services authorized by this subdivision, the authority is authorized to consult standards, guidelines, rating systems, and/or criteria established or adopted by other organizations, including but not limited to the United States green building council under its leadership in energy and environmental design (LEED) programs, the green building initiative's green globes rating system, and the American National Standards Institute. The source of any financing and/or loans provided by the authority for the purposes of this subdivision may be the proceeds of notes issued pursuant to section one thousand nine-a of this title, the proceeds of bonds issued pursuant to section one thousand ten of this title, or any other available authority funds.

(b) For the purposes of this subdivision, the following words and terms shall have the following meanings unless the context indicates another meaning or intent:

(1) "Agency" means any agency, department, or office of the state of New York.

(2) "Energy-related projects, programs and services" means 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.

(3) "Energy services contract" or "contract" means a contract pursuant to which the authority provides energy-related projects, programs and services.

(4) "High performance and sustainable building programs and services" means programs and services related to the renovation and retrofitting of buildings through the incorporation of standards, guidelines, rating systems, and/or criteria relating to design and building techniques established by the authority pursuant to this section, which are addressed to such issues as energy efficiency, energy conservation, the use of renewable energy, the reduction of air and other pollution, and the conservation of materials and resources such as water.

(5) "Public entity" means an agency, public authority, public benefit corporation, public corporation, municipal corporation, school district, board of cooperative educational services, public university, fire district, district corporation, or special improvement district governed by a separate board of commissioners.

(6) "Public authority" means a public authority formed by or under the laws of the state of New York to the extent its facilities are located within the state, and the port authority of New York and New Jersey to the extent that its facilities are located within the state.

(7) "Public benefit corporation" means a public benefit corporation as defined in subdivision four of section sixty-six of the general construction law.

(8) "Public university" means the city university of New York including any senior college or community college as defined in section sixty-two hundred two of the education law, and the state university of New York including four-year colleges established pursuant to section sixty-three hundred seven of the education law and community colleges as defined in section sixty-three hundred one of the education law.

(c) Any public entity is authorized to enter into an energy services contract with the authority for energy-related projects, programs and services that are authorized by this subdivision, provided that (i) the authority issues and advertises written requests for proposals from third party providers of goods and services in accordance with the authority's procurement policies, procedures and/or guidelines, and (ii) the authority shall not contract with a third party provider of goods and services if such person is listed on a debarment list maintained and published in accordance with New York law, as being ineligible to submit a bid on or be awarded any public contract or subcontract with the state, any municipal corporation or public body.

(d) (i) Notwithstanding any other provision of law to the contrary, any energy services contract entered into by the authority with any public entity: (1) may have a term of up to thirty-five years duration, provided, however, that the duration of any such contract shall not exceed the reasonably expected useful life of any facilities or equipment constructed, installed or operated as part of such energy-related projects, programs and services subject to such contract; and (2) shall contain the following clause: "This contract shall be deemed executory only to the extent of the monies appropriated and available for the purpose of the contract, and no liability on account therefor shall be incurred beyond the amount of such monies. It is understood that neither this contract nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of the contract." A school district or board of cooperative educational services may only enter into an energy services contract with the authority for such maximum term as is prescribed in the regulations promulgated by the commissioner of education or the useful life of the facilities or equipment being constructed, installed or operated, whichever is less.

(ii) Notwithstanding any other provision of law to the contrary, in order to provide an interest in real or other property necessary for the construction of facilities or the operation of equipment provided for in an energy services contract, a public entity may enter into a lease or other agreement with the authority concerning real or other property to which it holds title or which is under its administrative jurisdiction, as is necessary for such construction or operation, for the same length of time as the term of the energy services contract and on such terms and conditions as may be agreeable to the parties thereto and are not otherwise inconsistent with law, and notwithstanding that such real or other property may remain useful to such entity for the purpose for which such real or other property was originally acquired or devoted or for which such real or other property is being used.

(e) Nothing contained in this subdivision is intended to limit, impair or affect the authority's legal authority to provide energy efficiency and energy services programs that existed as of the effective date of this subdivision.

(f) The authority shall complete and submit a report, on or before January thirty-first, two thousand twelve, on those activities undertaken pursuant to this subdivision to the governor, the speaker of the assembly, the temporary president of the senate, the minority leader of the senate, the minority leader of the assembly, the chair of the senate finance committee, the chair of the assembly ways and means committee, the chair of the assembly energy committee and the chair of the senate energy committee.

18. For the purpose of furnishing the state with systematic information regarding the status and the activities of the authority, the authority shall submit to the governor, the temporary president of the senate, speaker of the assembly, the minority leader of the senate and the minority leader of the assembly, within ninety days after the end of its fiscal year, a complete and detailed annual report on each economic development power program it administers. Such annual report shall include, but not be limited to, the following information:

a. the number of recipients of economic power program benefits, the economic region in which each recipient is located, the type and amount of assistance provided, megawatts of power awarded, length of current contract, current contract compliance status, last audit, number of jobs retained and/or added in the fiscal year, approximate energy efficiency savings and amount of power reallocated from previous years due to forfeited benefits; and

b. cost to the authority to provide economic development power programs during the previous fiscal year.

The authority is authorized to allocate up to seventy megawatts of unallocated power from the Niagara project sold prior to the effective date of this paragraph as replacement power, up to thirty-eight and six-tenths megawatts of preservation power from the Saint Lawrence-FDR project which is relinquished or withdrawn after the effective date of this paragraph, and for the period ending on December thirty-first, two thousand six, up to an additional twenty megawatts of power from the Saint Lawrence-FDR project which is unallocated as of the effective date of this paragraph, for sale into the wholesale market, the net earnings from which and such other funds of the authority as deemed feasible and advisable by the trustees, shall be used for energy cost savings benefits. Such energy cost savings benefits shall be made upon recommendation of the economic development power allocation board, pursuant to subdivision (h) of section one hundred eighty-three of the economic development law. The authority is authorized to allocate unallocated expansion and replacement power from the Niagara project, and relinquished or withdrawn expansion and replacement power, for sale into the wholesale market, the net earnings from which and such other funds of the authority as deemed feasible and advisable by the trustees, shall be used for western New York economic development fund benefits. Such western New York economic development fund benefits shall be made upon recommendation of the western New York advisory group, as established under "memorandum of understanding regarding western New York hydro-power" agreed to by the authority on October twenty-second, two thousand three, pursuant to subdivision (i) of section one hundred eighty-three of the economic development law. For purposes of this paragraph, the term net earnings shall mean any excess of revenues earned from the sale of such power allocated to the wholesale market from the Niagara and Saint Lawrence-FDR projects over

the revenues that would have been received had such firm power been allocated and sold on a firm basis by the authority prior to the effective date of this paragraph.

The governor shall establish a temporary commission on the future of New York state power programs for economic development as soon as practicable but no later than May first, two thousand six. On or before December first, two thousand six, the commission shall make recommendations to the governor and the legislature on whether to continue, modify, expand or replace the state's economic development power programs, including but not limited to the power for jobs program and the energy cost savings benefit program, and shall recommend legislative language necessary to implement its recommendations. The commission shall consist of eleven members, comprised of five members appointed by the governor, one of whom he or she shall designate as chairperson, two members by the speaker of the assembly, two members by the temporary president of the senate, one member by the minority leader of the assembly and one member by the minority leader of the senate.

#### **§ 1005-a. Actions or contracts involving certain nuclear power plants**

Whenever the authority undertakes or executes any action or contract involving the closure, maintenance, decommissioning or conversion of any nuclear power plant constructed by a utility corporation which has not entered commercial operation, the authority shall, in order to ensure that neither the authority nor its customers shall bear any of the costs associated therewith, provide for the full recovery from such corporation, its successors or assigns of:

(a) all direct and indirect costs and expenses incurred by the authority in connection with such actions or contracts;

(b) all direct and indirect costs incurred by the authority in connection with damages to third parties resulting from any actions of the authority in connection with such actions or contracts; provided, however, that the authority shall not be indemnified against damages for gross negligence or willful misconduct; and

(c) all damages incurred by the authority in connection with such actions or contracts other than damages resulting from its gross negligence or willful misconduct.

In no event shall the authority recover any costs or damages related to such actions or contracts from any of its customers other than such corporation its successors or assigns.

#### **§ 1006. Power to compel attendance of witnesses**

For the purpose of exercising its powers and performing its duties hereunder and of securing such information as it may deem necessary hereunder, the authority shall have the power to compel the attendance of witnesses and the production of documents. The power hereby conferred upon the authority may be exercised by any one or more of the trustees if he or they are authorized so to act on behalf of the authority by resolution or by law. A subpoena issued under this section shall be regulated by the civil practice law and rules.

## **§ 1007. Acquisition of property**

If, for any of the purposes hereunder, including temporary construction purposes and the making of additions or improvements, the authority shall find it necessary or convenient for it to acquire any real property as herein defined, whether for immediate or future use, then the authority may find and determine that such property is required for a public use, and upon such due determination, such property shall be and shall be deemed to be required for such public use until otherwise determined by the authority and with the exceptions hereinafter specifically noted such determination of fact shall not be affected by the fact that such property has theretofore been taken for, or is then devoted to, a public use; but the public use in the hands or under the control of the authority shall be deemed superior to the public use in the hands of any other person, association or corporation. If the authority is unable to agree for the acquirement of any such property, or if the owner thereof shall be incapable of disposing of the same, or if, after diligent search and inquiry, the name and residence of any such owner cannot be ascertained, or if any such property has been acquired or attempted to be acquired and title or other rights therein have been found to be invalid or defective, the authority may acquire such property by condemnation under and pursuant to the provisions of this title.

1. When any real property within this state is sought to be acquired by condemnation, the authority shall cause a survey and map to be made thereof, and shall cause such survey and map to be filed in its office. There shall be annexed to such survey and map a certificate executed by the chief engineer of the authority, or by such other officer or employee as may be designated by the trustees, stating that the property or interest therein described in such survey and map are necessary for its purposes.

2. Upon filing such survey and map the authority shall petition a special term of the supreme court held in the judicial district in which the property is located, or the county court of any county where such property is located, for the condemnation of such property or interest therein, as have not been otherwise acquired. Such petition shall be generally in the form prescribed by section four of the condemnation law, so far as consistent herewith. Such petition, together with a notice of pendency of the proceeding, shall be filed in the office of the county clerk of such county and shall be indexed and recorded as provided by law. A copy of such petition together with a notice of the presentation thereof to such special term of the supreme court or to the county court shall be served upon the owners as provided in sections five and six of the condemnation law. The authority may cause a duplicate original affidavit of the service thereof to be recorded in the books used for recording deeds in the office of the county clerk of the county wherein the property described in such notice is situated, and the recording of such affidavit shall be prima facie evidence of due service thereof.

3. At any time after the recording of the petition and notice as above provided the authority may enter upon and use and occupy all the parcels of real estate described in the proceedings for the condemnation thereof, provided that it shall first deposit with the court a sum equal to the assessed valuation of such real property, or in the event that the assessed valuation thereof cannot readily be ascertained, such sum as in its judgment shall be sufficient as compensation for the real property acquired. The sum so deposited shall be applied as provided in section twenty-four of the condemnation law. Upon the recording of the petition and notice and the making of the deposit, the owner or person in possession of such real property shall deliver possession thereof to the authority upon demand, and in case possession is not delivered when demanded, or demand is not convenient be-

cause of absence of the owner or inability to locate or determine the owner, the authority may apply to the court without notice for an order requiring the sheriff to put it into possession of such real property. Such an order must be executed as if it were an execution for the delivery of the possession of the property.

4. The proceedings thereafter shall be in the manner prescribed by the condemnation law so far as consistent herewith.

5. The commissioners appointed to ascertain and determine the compensation which ought justly to be made to the owners of property or interests therein appraised by them as provided in section thirteen of the condemnation law shall make their report of the value thereof to the supreme court within one hundred days from the date of their qualification.

6. The persons or corporations whose property shall have been taken by condemnation and who shall have agreed upon the compensation to be paid therefor in settlement of the proceeding, or to whom an award of compensation shall have been made by the court, shall be entitled to payment of the agreed or awarded compensation within three calendar months after the date of the agreement upon the amount of the compensation or of the entry of the order confirming the report of the commissioners of appraisal, together with interest upon the amount of such compensation from the time of the entry and appropriation thereof by the authority, to the date of payment of such compensation; but such interest shall cease upon the service by the authority, upon the person or corporation entitled thereto, of a fifteen days' notice that the authority is ready and willing to pay the amount of such compensation upon the presentation of proper proofs and vouchers. Such notice shall be served personally or by registered mail and publication thereof at least once a week for three successive weeks in a daily newspaper, having a general circulation in the county where such property or any part thereof is located.

7. The authority may, at its option, acquire such real property within the state of New York, under the general condemnation law or, in the event it is a licensee of the federal power commission it may acquire such real property as is necessary for its purposes through the exercise of the right of eminent domain as provided in section twenty-one of the federal power act, as amended.

8. The authority and its duly authorized agents and employees may enter upon any real property for the purpose of making the surveys or maps mentioned in this section, or for such other surveys or examinations of real property as may be necessary or convenient for the purposes of this title.

9. The term "real property" as used in this title is defined to include lands, structures, franchises and interests in land, including lands under water and riparian rights, and any and all other things and rights usually included within the said term, and includes also any and all interests in such property less than full title, such as easements, rights of way, uses, leases, licenses and all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages or otherwise, and also all claims for damages for such real estate.

10. The authority may determine what real property is reasonably necessary for the construction or operation of any project authorized by this title including transmission facilities. If funds are made available by the authority to the state for payment of the cost and expense of the acquisition thereof, the commissioner of transportation, when requested by the authority, shall acquire such real property in the name of the state by appropriation and, where necessary, remove the owner or occupant thereof and obtain possession, according to the procedure provided by section thirty of the

highway law, insofar as the same may be applicable. The authority shall have the right to possess and use for its corporate purposes, so long as its corporate existence shall continue, all such real property and rights in real property so acquired.

Claims for the value of the property appropriated and for legal damages caused by any such appropriation shall be adjusted and determined by the commissioner with the approval of the authority, or by the court of claims as provided in said section thirty. When a claim has been filed with the court of claims, the claimant shall cause a copy of such claim to be served upon the authority and the authority shall have the right to be represented and heard before said court. All awards and judgements arising from such claims shall be paid out of moneys of the authority.

The authority may determine whether any property appropriated pursuant to this section, while under its jurisdiction, should be sold or exchanged in whole or in part, on terms beneficial to the state and the authority, and in all cases where such a determination is made, the authority may sell or exchange such property. Where the authority finds it practicable and reasonable, the former owner, from whom the property was appropriated, his heirs, successors in interest and assigns, shall be given the first opportunity to purchase such property at its fair market value. In order to carry any such sale or exchange into effect the authority is hereby authorized to execute and deliver in the name of the people of the state a quit claim of such property. Money proceeds of any such sale shall be retained by the authority. Title to property received upon such exchange shall be acquired in the name of the state, and the authority shall have the same rights of occupation and use thereof and shall be vested with the same rights with respect thereto as is provided in this section and in section one thousand eight as to property of the state. Where property appropriated pursuant to this section is required by the Saint Lawrence Seaway Development Corporation, created pursuant to public law three hundred fifty-eight of the 83rd Congress, or any successor corporation, the authority may convey such property to such corporation, and, if the license issued to the authority by the federal power commission shall so require, such conveyance may be made without consideration.

The attorney general is hereby authorized and empowered to certify to such Saint Lawrence Seaway Development Corporation, the right, title or interest vested in the name of the people of the state of New York in and to property appropriated pursuant to this section and proposed to be conveyed to such Saint Lawrence Seaway Development Corporation as hereinbefore provided.

#### **§ 1008. Consent of state**

The state of New York hereby consents to the occupation and use by the authority of any and all property of the state of whatever kind or character on the Niagara river or within the international rapids section of the Saint Lawrence river, and hereby vests the authority with and delegates to it the right to exercise any and every right and power of the state in connection therewith, whether proprietary or sovereign in character, which the state itself might exercise, provided that such consent and delegation of power shall not permit the impairment or limit or prevent the future improvement of the navigability of the Niagara river or the international rapids section of the Saint Lawrence river, consistent with the maintenance of such projects, but on the contrary the projects shall be such as will improve and benefit commerce and navigation therein and provided further that

the authority shall have no power to limit, waive or surrender any right or interest of the state of New York in such rivers or the use thereof.

### **§ 1009. Contracts negotiated by authority**

Contracts negotiated by the authority as provided in sub-paragraph five or six of section one thousand five of this title shall be entered into and executed as follows:

1. After agreement upon the terms of any such contracts shall have been reached by the authority and its co-party or co-parties, the authority shall promptly transmit a copy of such proposed contract to the governor, the speaker of the assembly, the minority leader of the assembly, the chairman of the assembly committee on ways and means, the temporary president of the senate and the minority leader of the senate and the chairman of the senate finance committee and shall hold a public hearing or hearings upon the terms thereof. At least thirty days' notice of such hearing shall be given by publication once in each week during such period in each of six newspapers within the state to be selected by the authority. Copies of proposed contracts shall be available for public inspection during such period of thirty days at the office or offices of the authority and at such other places throughout the state as it may designate.

2. Following such public hearing, the authority shall reconsider the terms of the proposed contract or contracts and shall negotiate such changes and modifications in the contract or contracts as it then deems necessary or advisable.

3. When such contract or contracts are finally agreed upon in terms satisfactory to the authority and its co-party or co-parties, and which the authority believes to be in the public interest, the authority shall thereupon report the proposed contract or contracts, together with its recommendations and the record of the public hearings thereon to the speaker of the assembly, the chairman of the assembly committee on ways and means, the temporary president of the senate, the chairman of the senate finance committee and the governor. The governor shall, within sixty days thereafter, indicate his approval or disapproval thereof and give his reasons therefor.

4. If the governor shall approve such contract, then the same shall be executed by the chairman and secretary of the authority and it shall thereupon come into full force and effect and be binding upon the authority and all other parties thereto in accordance with its terms.

### **§ 1009-a. Notes of the authority**

The authority shall have the power and is hereby authorized from time to time to issue its negotiable notes in conformity with applicable provisions of the uniform commercial code for any corporate purpose and renew from time to time any notes by the issuance of new notes, whether the notes to be renewed have or have not matured. The authority may issue notes partly to renew notes or to discharge other obligations then outstanding and partly for any other purpose. The notes may be authorized, sold, executed and delivered in the same manner as bonds. Any resolution or resolutions authorizing notes of the authority or any issue thereof may contain any provisions which the authority is authorized to include in any resolution or resolutions authorizing bonds of the authority or any issue thereof, and the authority may include in any notes any terms, covenants or conditions

which it is authorized to include in any bonds. All notes shall be general obligations of the authority payable out of any of its moneys or revenues, subject only to any contractual rights of the holders of any of its notes or other obligations then outstanding.

### **§ 1010. Bonds of the authority**

1. The authority shall have power and is hereby authorized from time to time to issue its negotiable bonds in conformity with applicable provisions of the uniform commercial code for the purpose of financing any project authorized by this title, including the acquisition of any real or personal property or facilities deemed necessary by the authority.

2. In anticipation of the sale of such bonds the authority may issue negotiable bond anticipation notes in conformity with applicable provisions of the uniform commercial code and may renew the same from time to time but the maximum maturity of any such note, including renewals thereof, shall not exceed five years from the date of issue of such original notes. Such notes shall be paid from any moneys of the authority available therefor and not otherwise pledged, or from the proceeds of sale of the bonds of the authority in anticipation of which they were issued. Such notes shall not be issued in an amount in excess of the amount of bonds which the authority is authorized to issue, less the amount of any bonds or other notes theretofore issued and outstanding. The notes shall be issued in the same manner as the bonds. Such notes and the resolution or resolutions authorizing the same may contain any provisions, conditions or limitations which a bond resolution of the authority may contain.

3. Except as may be otherwise expressly provided by the authority, the bonds and notes of every issue shall be general obligations of the authority payable out of any moneys or revenues of the authority, subject only to any agreements with the holders of particular bonds or notes pledging any particular moneys or revenues.

4. The authority shall have power from time to time, whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and may issue bonds partly to refund bonds then outstanding and partly for any other purpose hereinbefore described. Refunding bonds may be exchanged for the bonds to be refunded, with such cash adjustments as may be agreed, or may be sold with the proceeds applied to the purchase or payment of the bonds to be refunded.

5. The bonds may be issued payable in annual installments or may be issued as term bonds or the authority, in its discretion, may issue bonds of both types. The bonds shall be authorized by resolution of the trustees of the authority and shall bear such date or dates, mature at such time or times, not exceeding fifty years from their respective dates, bear interest at such rate or rates, payable annually or semi-annually, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places, and be subject to such terms of redemption, as such resolution or resolutions may provide. In the event that term bonds are issued, the resolution authorizing the same may make such provisions for the establishment and management of adequate sinking funds for the payment thereof, as the authority may deem necessary. The bonds or notes

may be sold at public or private sale for such price or prices as the authority shall determine. Pending preparation of the definite bonds, the authority may issue interim receipts which shall be exchanged for such bonds.

6. Any resolution or resolutions authorizing any bonds or any issue of bonds may contain provisions, which shall be a part of the contract with the holders of the bonds to be authorized as to

(a) pledging all or any part of the revenues of the project or any revenue producing contract or contracts made by the authority with any individual, partnership, corporation or association to secure the payment of the bonds or of any particular issue of bonds, subject to such agreements with bondholders as may then exist;

(b) the rentals, fees and other charges to be charged, and the amounts to be raised in each year thereby, and the use and disposition of the revenues;

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

(d) limitations on the right of the authority to restrict and regulate the use of any project;

(e) limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied and pledging such proceeds to secure the payment of the bonds or of any issue of the bonds;

(f) limitations on the issuance of additional bonds; the terms upon which additional bonds may be issued and secured; the refunding of outstanding bonds;

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

(h) limitations on the amount of moneys derived from a project to be expended for operating, administrative or other expenses of the authority;

(i) defining the acts or omissions to act which shall constitute a default in the duties of the authority to holders of its obligations and providing the rights and remedies of such holders in the event of a default.

7. Notwithstanding any other provisions of this title, any such resolution or resolutions shall contain a covenant by the authority that it will at all times maintain rates, fees or charges sufficient to pay, and that any contracts entered into by the authority for the sale, transmission or distribution of power shall contain rates, fees or charges sufficient to pay the costs of operation and maintenance of the project, the principal of and interest on any obligations issued pursuant to such resolution as the same severally become due and payable, and to maintain any reserves required by the terms of such resolution or resolutions.

8. It is the intention hereof that any pledge of revenues or other moneys or of a revenue producing contract or contracts made by the authority shall be valid and binding from the time when the pledge is made; that the revenues or other moneys or proceeds of any contract or contracts so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act; and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise

against the authority irrespective of whether such parties have notice thereof. Neither the resolution or any other instrument by which a pledge is created need be recorded.

9. Neither the members of the authority nor any person executing the bonds or notes shall be liable personally on the bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

10. The authority shall have power out of any funds available therefor to purchase bonds or notes. The authority may hold, pledge, cancel or resell such bonds, subject to and in accordance with agreements with bondholders.

11. Any bonds or notes issued by the authority are hereby made securities in which all public officers and bodies of this state and all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, and all other persons whatsoever, except as hereinafter provided, who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them; provided that, notwithstanding the provisions of any other general or special law to the contrary, such bonds and notes shall not be eligible for the investment of funds, including capital, of trusts, estates or guardianships under the control of individual administrators, guardians, executors, trustees and other individual fiduciaries except when any such individual fiduciary shall be acting in such capacity with one or more corporate co-fiduciaries. The bonds and notes are also hereby made securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of bonds or other obligations of this state is now or may hereafter be authorized.

#### **§ 1010-a. Deposit and investment of moneys of the authority**

All moneys of the authority from whatever source derived shall be paid to the comptroller as agent of the authority, who shall not commingle such moneys with any other moneys. Such moneys shall be deposited in a separate bank account or accounts. The moneys in such accounts shall be paid out on check of the comptroller on requisition of the chairman of the authority or of such other person as the authority may authorize to make such requisition. All deposits of such moneys shall, if required by the comptroller or the authority, be secured by obligations of the United States or of the state of New York of a market value equal at all times to the amount of the deposit and all banks and trust companies are authorized to give such security for such deposits. The comptroller and his legally authorized representatives are hereby authorized and empowered from time to time to examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other matters relating to its financial standing.

Notwithstanding the provisions of this section, the authority shall have power, subject to the approval of the comptroller, to contract with the holders of any of its notes or bonds as to the custody, collection, securing, investment and payment of any moneys of the authority, or any moneys held in

trust or otherwise for the payment of notes or bonds or in any way to secure notes or bonds, and to carry out any such contract. Moneys held in trust or otherwise for the payment of notes or bonds or in any way to secure notes or bonds and deposits of such moneys may be secured in the same manner as moneys of the authority, and all banks and trust companies are authorized to give such security for such deposits.

Moneys of the authority not required for immediate use may, in the discretion of the authority, be invested by the comptroller in obligations of the United States government or of the state of New York.

Subject to agreements with noteholders and bondholders and the approval of the comptroller, the authority shall prescribe a system of accounts.

### **§ 1011. Agreement of the state**

1. The state of New York does hereby pledge to and agree with the holders of any obligations issued under this title, and with those parties who may enter into contracts with the authority pursuant to the provisions in sub-paragraph five or six of section one thousand five above, that the state will not limit or alter the rights hereby vested in the authority until such obligations together with the interest thereon are fully met and discharged and/or such contracts are fully performed on the part of the authority, provided that nothing herein contained shall preclude such limitation or alteration if and when adequate provision shall be made by law for the protection of the holders of such obligations of the authority or those entering into such contracts with the authority. The authority as agent for the state is authorized to include this pledge and undertaking for the state in such obligations or contracts.

2. Nothing in this title shall be construed as diminishing or enlarging any valid existing rights under any license heretofore issued pursuant to the provisions of the federal power act.

### **§ 1012. Exemption from taxation**

It is hereby found and declared that the projects authorized by this title are for the aid and improvement of commerce and navigation and that such aid and improvement of commerce and navigation and the development, sale and distribution of power is primarily for the benefit of the people of the state of New York, for the improvement of their health and welfare and material prosperity, and is a public purpose, and the authority shall be regarded as performing a governmental function in undertaking such projects and in carrying out the provisions of this title, and shall be required to pay no taxes or assessments upon any of the property acquired by it for such projects or upon its activities in the operation and maintenance thereof, provided that nothing herein shall prevent the authority from entering into agreements to make payments in lieu of taxes with respect to property acquired for any project where such payments are based solely on the value of real property without regard to any improvement thereof by the authority and where no bonds to pay any costs of such project were issued prior to January first, nineteen hundred seventy-two.

The securities and other obligations issued by the authority, their transfer and the income therefrom shall, at all times, be free from taxation within this state. It is furthermore declared that the object and purpose of this title is that such projects shall be in all respects self-supporting.

#### **§ 1012-a. Emergency contributions to county of Niagara and city of Niagara Falls**

1. On June seventh, nineteen hundred fifty-six a collapse of the rock wall of the Niagara river resulted in the substantial destruction of a hydro-electric power generating plant which annually produced more than three billion kilowatt hours of low-cost electric energy, most of which was used by industrial plants employing great numbers of workers in the city of Niagara Falls and vicinity. These industries would be forced to curtail their operations drastically or abandon them and thousands of jobs would be lost if the industries were not able to obtain necessary power at high cost on a temporary basis from the hydro-electric power commission of Ontario. This commission is using not only Ontario's share of the water of the Niagara river under the treaty signed on February twenty-seventh, nineteen hundred fifty, between the United States and Canada, but also a large part of New York's share of such water. To provide for the retention and expansion of existing industry and the attraction of new industry vital to the economy of the area and to the defense of the United States, it is essential that power authority of the state of New York complete a power project to utilize all of the waters of the Niagara available in the United States. The destruction caused by the rock slide resulted in reducing to the extent of some ten million dollars the total valuation of real property subject to taxation in the city of Niagara Falls. This will result in a temporary tax loss to the county of Niagara and the city of Niagara Falls of approximately seven hundred thousand dollars per year with resulting hardship to taxpayers. An increase in the tax base sufficient to offset such loss cannot be brought about until industrial activities in the area are expanded and increased through the availability of low-cost power from such New York hydro-electric power project. An emergency justifying financial relief to the county of Niagara and city of Niagara Falls exists and will continue until such a project is completed. It is recognized that public authorities constitute valuable governmental entities in the state, performing important functions on a businesslike basis through the use of private funds borrowed from prudent investors without state or municipal credit, and that the integrity and independence of these authorities must be maintained and their present exemption from taxation protected.

2. Power authority of the state of New York is hereby authorized to include in financing the cost of its Niagara river project a total sum of (1) three million dollars in addition to that otherwise required and to contribute such additional total sum as emergency relief to the county of Niagara and city of Niagara Falls on the basis of decreasing annual allotments over a five-year construction and expansion period; such annual allotments shall be allocated for school and other purposes in the same proportion as other moneys collected as real property taxes in such city; and (2) the power authority of the state of New York is hereby authorized to expend the sum of one and one-half million dollars for local improvements in the city of Niagara Falls incidental to or reasonably related to the Niagara power project of the authority.

#### **§ 1013. Repayment of state appropriations**

All appropriations made by the state to the authority shall be treated as advances by the state to the authority, and shall be repaid to it without interest either out of the proceeds of securities, or other obligations issued by the authority for the construction of any project pursuant to the provisions of this title, or by the delivery of non-interest bearing obligations of the authority to the state for all or any part of such advances, or out of excess revenues from such project subject however to any pledges of such revenues made pursuant to any resolution or resolutions of the authority authorizing the issuance of obligations of the authority issued prior to nineteen hundred and sixty.

**§ 1014. Public service law not applicable to authority; inconsistent provisions in other acts superseded**

The rates, services and practices relating to the generation, transmission, distribution and sale by the authority, of power to be generated from the projects authorized by this title shall not be subject to the provisions of the public service law nor to regulation by, nor the jurisdiction of the department of public service. Except to the extent article seven of the public service law applies to the siting and operation of a major utility transmission facility as defined therein, and article ten of the public service law applies to the siting of a major electric generating facility as defined therein, and except to the extent section eighteen-a of the public service law provides for assessment of the authority for certain costs relating thereto, the provisions of the public service law and of the environmental conservation law and every other law relating to the department of public service or the public service commission or to the environmental conservation department or to the functions, powers or duties assigned to the division of water power and control by chapter six hundred nineteen of the laws of nineteen hundred twenty-six, shall so far as is necessary to make this title effective in accordance with its terms and purposes be deemed to be superseded, and wherever any provision of law shall be found in conflict with the provisions of this title or inconsistent with the purposes thereof, it shall be deemed to be superseded, modified or repealed as the case may require.

**§ 1015. Title not affected if in part unconstitutional or ineffective**

If any term or provision of this title shall be declared unconstitutional or ineffective in whole or in part by a court of competent jurisdiction, then to the extent that it is not unconstitutional or ineffective such term or provision shall be enforced and effectuated, nor shall such determination be deemed to invalidate the remaining terms or provisions hereof.

**§ 1016. [Renumbered]**

**§ 1017. Actions against authority**

1. In any action founded upon tort a notice of claim shall be required as a condition precedent to the commencement of an action or special proceeding against the authority or any officer, appoin-

tee, agent or employee thereof, and the provisions of section fifty-e of the general municipal law shall govern the giving of such notice.

2. An action against the authority for wrongful death shall be commenced in accordance with the notice of claim and time limitation provisions of title eleven of article nine of this chapter.