POWER AUTHORITY OF THE STATE OF NEW YORK

2016 REPORT TO THE GOVERNOR AND LEGISLATIVE LEADERS ON POWER PROGRAMS FOR ECONOMIC DEVELOPMENT

April 2017

Introduction

This "2016 Report to the Governor and Legislative Leaders on Power Programs for Economic Development" ("Report") is submitted by the Power Authority of the State of New York (the "Authority" or "NYPA") pursuant to Public Authorities Law ("PAL") §§ 1005(18), (23) and (24)(e).

Subdivision 18 provides:

> 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:
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> 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[1]
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> b. cost to the authority to provide economic development power programs during the previous fiscal year.

Subdivision 23 provides:

> 23. The authority shall include in the annual report prepared pursuant to subdivision eighteen of this section, an accounting for the subject year that provides (a) the amount of expansion power and replacement power sold into the wholesale market by the authority, and (b) the net earnings, as such term is defined in section one hundred eighty-nine-a of the economic development law, paid into the western New York economic development fund.[2]

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[1] None of the statutes authorizing the programs discussed in this Report require a program participant to establish energy efficiency savings in connection with the receipt of power under the program. Therefore, the Authority is unable to report on this specific information.

[2] PAL § 1005(14) calls for reporting on the status of "economic development power," a program created by Chapter 32 of the Laws of 1987 which was, in the program's later years, supported with market-based power. Components of that program were allowed to expire or were repealed in view of the creation of the Recharge New York Power program in 2011. Therefore, the economic development power program is no longer administered. Accordingly, there is no information to report on economic development power in response to PAL § 1005(14).

Paragraph (e) of subdivision 24 provides:

> (e) The authority shall include in the annual report prepared pursuant to subdivision eighteen of this section, an accounting for the subject year that provides the amount of St. Lawrence county economic development power sold into the wholesale market by the authority, and the net earnings paid into the northern New York economic development fund.

To simplify the presentation of the information required by PAL § 1005(18), (23) and (24)(e), the Authority has combined the reporting requirements of these statutory provisions in this Report.

A. Recharge New York Power Program

- Program Details

Chapter 60 (Part CC) of the Laws of 2011 ("Chapter 60") created the Recharge New York ("RNY") Power program. The RNY Power program makes 910 megawatts ("MW") of "Recharge New York Power" ("RNY Power") available to "eligible applicants" for the purpose of attracting new businesses and retaining and expanding existing businesses throughout the State of New York.

The RNY Power resource is comprised of: (1) fifty percent (50%) of firm hydroelectric power from the Authority's Niagara and Saint Lawrence-FDR hydroelectric projects ("RNY Hydropower") that was withdrawn, effective August 1, 2011, from the utility corporations that had purchased such power for the benefit of domestic and rural consumers; and (2) fifty percent (50%) of power procured by the Authority through market sources, a competitive procurement process, or Authority sources (other than the Niagara and Saint Lawrence projects) (collectively, "RNY Market Power").

Pursuant to Chapter 60, the Authority has been authorized, as of July 1, 2012, to "make available, contract with and sell" to eligible applicants such RNY Power allocations as are recommended by the Economic Development Power Allocation Board ("EDPAB"). RNY allocations consist of equal parts of RNY Hydropower and RNY Market Power.

Pursuant to Chapter 60 and by order of the NYS Public Service Commission, the State's retail utilities are required to deliver RNY Power at a discount. In essence, the discount derives from exempting RNY Power from the Renewable Portfolio Standard Surcharge and the Systems Benefit Charge, including the Energy Efficiency Portfolio Standard surcharge.

The delivery discount applies to a Customer's total RNY Power allocation even if the Customer decides to purchase the RNY Market Power component of its allocation from a non-NYPA source. If a customer declines to purchase RNY Market Power from the Authority, the Authority has no responsibility for supplying such power to the customer for the term of the allocation.

- Projected Availability

As of December 31, 2016, a balance of 160.864 MW of RNY Power was available for allocation to eligible applicants.[3]

- Current Allocations

As of December 31, 2016, 834 allocations of RNY Power had been approved by the Authority for 744 eligible applicants totaling 749.136 MW. All current RNY Power awards, including recipient name, location, region, MW of power awarded, length of current contract, and total number of jobs committed to be retained or added are listed in Exhibit I to this Report. All program statistics include pending and in-service allocations.[4]

In 2016, Authority staff conducted a cost savings analysis for RNY customers for the period of January 1, 2015 to December 31, 2015. It was determined that RNY Power allocations collectively provided program participants an estimated cost benefit of over $44 million or approximately 17%. The estimated cost benefits are based on a comparison of the cost of RNY Power vs. the local utility standard electric tariff rates, reflecting commodity and estimated delivery costs.

The Authority commenced making allocations of RNY Power in fiscal year 2012. As of the end of 2016, the RNY Power program was supporting the retention and/or creation of 371,614 jobs.

- Compliance Information

In 2016, Authority staff conducted its second annual compliance review of customers receiving power allocations under the RNY Power program for the reporting period from July 1, 2014 through June 30, 2015. The compliance review examined RNY Power customer contract compliance in 3 areas: (1) job retention; (2) capital investment; and (3) power utilization (the "Supplemental Commitment Areas"). Of all RNY customers included in this compliance review reporting period, 536 customers received RNY Power for an entire 12-month period and thus were in a position to be evaluated in the Supplemental Commitment Areas.

The underlying RNY Power contract specifies the customer's commitments for job retention, capital investment and power utilization (collectively, the "Supplemental Commitments"). The Authority may reduce a customer's RNY Power allocation and contract demand if the customer fails to achieve at least a 90% compliance rate for a specific

[3] This amount of unallocated RNY Power may not be available to all eligible applicants. The underlying statute specifies set-asides and caps on the amount of RNY Power that may be allocated for purposes of business retention and expansion, and certain categories of eligible applicants (*e.g.* small businesses and not-for-profit corporations). *See* Economic Development Law § 188-a(c)(4).

[4] Examples of pending allocations include awarded allocations that (i) have not yet been addressed in a contract between NYPA and the awardee, and (ii) have been addressed in such a contract, but not yet placed into service by the awardee.

Supplemental Commitment. Some customers have pointed to a number of business/financial-related challenges as reasons for this non-compliance, including the lingering effects of the 2008-2009 economic downturn, the loss of business due to a depressed industry/national economy, and/or increased global competition.

The Authority chose to enforce the Supplemental Commitment Areas at a 90% level for the RNY Power program for this specific compliance review reporting period. Where the Authority took compliance action against non-compliant customers, it also adjusted the Supplemental Commitments of such customers in light of the reductions made to the power allocations and contract demands of such customers.

As a result of compliance action taken for this compliance review reporting period, the Authority reduced power allocations and contract demands for 52 RNY power customers, resulting in a total allocation reduction of 4.47 MW. Adjustments to the commitments of these customers resulted in a total job commitment reduction of 4,785 jobs, and a total capital investment reduction of $57,920.

- Forfeiture and Reallocation

The amount of power forfeited during the previous reporting year (2015) for non-compliance or other reasons is approximately 57.9 MW.[5]

It is not possible to identify precisely what portion of 2015 forfeited power was reallocated in 2016 because at any given time during the reporting year there is some amount of unallocated power.

B. Expansion Power

- Program Details

Under PAL § 1005(13), the Authority is authorized to contract, allocate or reallocate directly, or by sale for resale, 250 MW of firm hydroelectric power as "Expansion Power" ("EP") to eligible businesses in the State located within 30 miles of the Niagara Power Project, provided that the amount of Expansion Power allocated to businesses in Chautauqua County on January 1, 1987 continues to be allocated in such county.

- Projected Availability

As of December 31, 2016, a balance of 33.9 MW of EP was available for reallocation to eligible businesses.

[5] For purposes of this report, the Authority is interpreting the term "forfeited" to mean any instance of surrender of previously-allocated power whether due to non-compliance, a lack of need for any portion of an allocation, a reduction in the business operations of a customer, or some other reason.

- Current Allocations

As of December 31, 2016, 93 allocations of EP had been approved by the Authority to 69 companies totaling 216.1 MW. All current EP allocations, including recipient name, location, and region, MW of power awarded, length of current contract, current contract compliance status and total number of jobs committed to be retained and/or added are listed in Exhibit II to this Report. All program statistics include pending and in-service allocations.

As of the end of the 2016 fiscal year, the EP program was supporting a total of 23,378 jobs.

- Compliance Information

In 2016, Authority staff conducted its annual compliance review of customers receiving hydropower under the EP Program covering the reporting period of January 2015 through December 2015. The compliance review examined contract compliance in the Supplemental Commitment Areas.

Of all EP customers included in this compliance review reporting period, 66 customers received EP for an entire 12-month period and thus were in a position to be evaluated for compliance.

The underlying EP contract requires the customer to achieve at least a 90% compliance rate for each Supplemental Commitment in order to avoid compliance action. As it did with the RNY Power Program, the Authority chose to enforce Supplemental Commitments of EP customers at a 90% level for this specific compliance review reporting period. Where the Authority took compliance action against such customers, it also adjusted the Supplemental Commitments of such customers in light of the reductions made to the power allocations and contract demands of such customers.

As a result, the Authority reduced power allocations and contract demands for 11 EP customers. The total allocation reduction was 7.0 MW. Adjustments to the commitments of these customers resulted in a total job commitment reduction of 435 jobs, and a total capital investment commitment reduction of $667,719.

- Forfeiture and Reallocation

The amount of power forfeited during the previous reporting year (2015) for non-compliance or other reasons is approximately 23.2 MW.[6]

[6] For purposes of this Report, the Authority is interpreting the term "forfeited" to mean any instance of surrender of previously-allocated power whether due to non-compliance, a lack of need for any portion of an allocation, reduction in the business operations of a customer, or some other reason.

It is not possible to identify precisely what portion of 2015 forfeited power was reallocated in 2016 because at any given time there is always some amount of unallocated power. Comparing the total amount of power allocated as of the close of the reporting year with the total amount of power allocated as of the close of the previous year may provide a rough indication of allocation trends although such information may not account for changes in allocation levels that occur within a particular reporting year.

C. Replacement Power

- Program Details

"Replacement Power" ("RP") consists of 445 MW of firm hydropower generated by the Authority at its Niagara Project in accordance with PAL § 1005(13). To qualify for RP a business must have facilities for the receipt of RP located within 30 miles of the Authority's Niagara Power Project.

- Projected Availability

As of December 31, 2016, a balance of 83.3 MW of RP was available for reallocation to eligible businesses.

- Current Allocations

As of December 31, 2016, 132 allocations of RP had been approved by the Authority to 80 companies totaling 361.7 MW. All current RP allocations, including recipient name, location and region, MW of power awarded, length of current contract, current contract compliance status and total number of jobs committed to be retained and/or added are listed in Exhibit III to this Report. All program statistics include pending and in-service allocations.

As a result of new allocations awarded in 2016, 380 created jobs were added under the RP program. As of the end of the 2016 fiscal year, the RP program was supporting a total of 19,723 jobs.

- Compliance Information

In 2016, Authority staff conducted its annual compliance review of customers receiving hydropower under the RP Program covering the reporting period of January 2015 through December 2015. The compliance review examined contract compliance in the Supplemental Commitment Areas.

Of all RP customers included in this compliance review reporting period, 67 customers received RP for an entire 12-month period and thus were in a position to be evaluated for compliance.

The underlying RP contract requires customers to achieve at least a 90% compliance rate for each Supplemental Commitment in order to avoid compliance action. As it did with the RNY Power Program, the Authority chose to enforce Supplemental Commitments of RP customers at a 90% level for this specific compliance review reporting period. Where the Authority took compliance action against non-compliant customers, it also adjusted the Supplemental Commitments of such customers in light of the reductions made to the power allocations and contract demands of such customers.

As a result, the Authority reduced power allocations and contract demands for 10 RP customers. The total allocation reduction was 5.2 MW. Adjustments to the commitments of these customers resulted in a total job commitment reduction of 187 jobs, and a total capital investment commitment reduction of $257,050.

- Forfeiture and Reallocation

The amount of power forfeited during the previous reporting year (2015) for non-compliance or other reasons is approximately 59.7 MW.[7]

It is not possible to identify precisely what portion of 2015 forfeited power was reallocated in 2016 because at any given time there is always some amount of unallocated power. Comparing the total amount of power allocated as of the close of the reporting year with the total amount of power allocated as of the close of the previous year may provide a rough indication of allocation trends although such information may not account for changes in allocation levels that occur within a particular reporting year.

D. Preservation Power[8]

- Program Details

Chapter 313 of the Laws of 2005 established the "Preservation Power" ("PP") program relating to allocations of hydropower within the counties of Jefferson, St. Lawrence and Franklin Counties from quantities of power sold to Alcoa and GM Powertrain from the St. Lawrence-FDR Power Project. The PP program is comprised of 490 MW, including 245 MW of firm and interruptible hydropower currently sold to Alcoa.

- Projected Availability

As of December 31, 2016, a balance of 235.8 MW of PP was available for reallocation to eligible businesses.

- Current Allocations

[7] For purposes of this Report, the Authority is interpreting the term "forfeited" to mean any instance of surrender of previously-allocated power whether due to non-compliance, a lack of need for any portion of an allocation, reduction in the business operations of a customer, or some other reason.

[8] The figures reported under the Program Details, Projected Availability and Current Allocations headings reflect the impact of a power sale contract to be entered between the Authority and Alcoa Inc. that would be effective as of October 1, 2015.

As of December 31, 2016, 6 allocations of PP to companies had been approved by the Authority totaling 254.3 MW. All current PP allocations, including recipient name, location and region, MW of power awarded, length of current contract, current contract compliance status and total number of jobs committed to be retained and/or added are listed in Exhibit IV to this Report. All program statistics include pending and in-service allocations.

As of the end of the 2016 fiscal year, the PP program was supporting a total of 1,654 jobs.

- Compliance Information

In 2015, Authority staff conducted annual compliance review of customers receiving hydropower under the PP Program covering the reporting period of January 2015 through December 2015. The compliance review examined contract compliance in 3 areas: (1) job retention; (2) power utilization; and (3) capital investment.

Of all PP customers included in this compliance review reporting period, 2 customers received PP an entire 12-month period and thus were in a position to be evaluated for compliance. Both customers were found to be in compliance, and therefore no compliance action was taken.

- Forfeiture and Reallocation

The amount of power forfeited during the previous reporting year (2015) for non-compliance or other reasons is approximately 233 MW.[9]

It is not possible to identify precisely what portion of 2015 forfeited power was reallocated in 2016 because at any given time there is always some amount of unallocated power. Comparing the total amount of power allocated as of the close of the reporting year with the total amount of power allocated as of the close of the previous year may provide a rough indication of allocation trends although such information may not account for changes in allocation levels that occur within a particular reporting year.

E. High Load Factor Power

- Program Details

The High Load Factor Power ("HLF") program provides for the allocation of power to energy-intensive industries throughout the state. HLF power is sourced from the market and therefore no longer provides a meaningful benefit. Consequently, all but three HLF allocations have expired.

[9] For purposes of this Report, the Authority is interpreting the term "forfeited" to mean any instance of surrender of previously-allocated power whether due to non-compliance, a lack of need for any portion of an allocation, reduction in the business operations of a customer, or some other reason.

- Current Allocations

As of December 31, 2016, three allocations of HLF power to three companies had been approved by the Authority totaling 18.5 MW. All HLF allocations are listed in Exhibit V to this Report**.**

F. Transitional Electricity Discounts

Section 6 of Chapter 60 (Part CC) of the Laws of 2011 authorized the provision of a "transitional electricity discount" ("TED") to RNY Power applicants who (1) at the time of application were in substantial compliance with all contractual commitments and receiving benefits under the Power for Jobs ("PFJ") and/or Energy Cost Savings Benefits ("ECSB") programs, but (2) did not receive a recommendation from EDPAB for a RNY Power allocation. By law, the PFJ and ECSB program expired on June 30, 2012. Specifically, Section 6 provides:

> § 6. Transitional electricity discount. Notwithstanding any provision of title 1 of article 5 of the public authorities law or article 6 of the economic development law to the contrary, with respect to applicants who are in substantial compliance with all contractual commitments and receiving benefits under the power for jobs, energy cost savings benefit, economic development, high load factor or municipal distribution agency programs, but do not receive a recommendation from the New York state economic development power allocation board for a recharge New York power allocation pursuant to section 188-a of the economic development law, such board shall recommend that the power authority of the state of New York provide for a transitional electricity discount to such applicants. The power authority of the state of New York is authorized, as deemed feasible and advisable by the trustees, to provide such transitional electricity discounts as recommended by the New York state economic development power allocation board. The power authority of the state of New York shall identify and advise such board whether sufficient funds are available for the funding of such transitional electricity discounts through June 30, 2016. The amount of the transitional electricity discount for the period July 1, 2012 through June 30, 2014 shall be equivalent to 66 percent of the unit (per kilowatt-hour) value of the savings received by the applicant under the power for jobs or energy cost savings benefit programs during the 12 months ending on December 31, 2010. The amount of the transitional electricity discount for the period July 1, 2014 through June 30, 2016 shall be equivalent to 33 percent of the unit (per kilowatt-hour) value of the savings received by the applicant under the power for jobs or energy cost savings benefit programs during the 12 months ending on December 31, 2010.

Participants in former NYPA programs who are receiving benefits under the TED program are identified in Exhibit VI to this Report.

G. Expansion Power Net Revenues for Industrial Incentive Awards

The Authority is required no less often than annually to identify the net revenues produced by the sale of EP, and further to identify an amount of the net revenues from the sale of EP that will be used for Industrial Incentive Awards. *See* PAL § 1005 (eight undesignated paragraph). "Net revenues" is defined to mean "any excess of revenues properly allocated to the sales of expansion power over costs and expenses properly allocated to such sales."

For the year ending December 31, 2016, $15,520,000 in net revenues was produced by the sale of EP. In 2016, $5,635,971 of net revenues was paid out in Industrial Incentive Awards.

H. Western New York Economic Development Fund

The Western New York Economic Development Fund ("Fund") was created by Chapter 58 (Part GG) of the Laws of 2012 to support economic development in Western New York. It consists of a fund, known as the "Western New York Economic Development Fund" ("Fund"), created and administered by the Authority. It is funded with the aggregate excess of revenues received by NYPA from the sale of EP and RP produced at NYPA's Niagara Power Project that was sold in the wholesale energy market over what revenues would have been received had such power been sold on a firm basis to an eligible EP or RP customer (defined in the statute as "net earnings").

As noted in the introduction to this Report, NYPA is required to include in this Report an accounting for the subject reporting year that provides (1) the amount of EP and RP sold into the wholesale market, and (2) the "net earnings" paid into the Fund for the reporting year.

The amount of EP and RP sold into the wholesale market for the 2016 period totaled 727,755 megawatt-hours. As of December 31, 2016, the Authority had deposited a total of $41,031,000 into the Fund since inception of the program.

I. Northern New York Economic Development Fund

The Northern New York Economic Development Fund ("Fund") was created by Chapter 545 of the Laws of 2014 to support economic development in Northern New York. It consists of a fund, known as the "Northern New York Economic Development Fund," created and administered by the Authority. It is funded with the aggregate excess of revenues received by the Authority from the sale of energy associated with "St. Lawrence county economic development power" sold by the Authority in the wholesale energy market over what revenues would have been received had such energy been sold on a firm basis under a contract between the Authority and the Town of Massena Electric Department (defined in the statute as "net earnings").

As noted in the introduction to this Report, NYPA is required to include in this Report an accounting for the subject reporting year that provides (1) the amount of St. Lawrence County economic development power sold into the wholesale marker by the Authority, and (2) the “net earnings” paid into the Fund for the reporting year.

The amount of power sold into the wholesale market for the 2016 period totaled 122,976 megawatt-hours. As of December 31, 2016, the Authority had deposited a total of $1,946,000 into the Fund.

J. Cost to Provide Economic Development Power Programs

The Authority incurs no net costs from the RNY, RP, EP and PP power programs, as its costs are recovered in the rates paid to the Authority by the program participants.

The Authority incurred $1,697,570 in costs during 2016 for payments to TED recipients.