

Article 6 NEW YORK STATE ECONOMIC DEVELOPMENT POWER ALLOCATION BOARD

- 182 *The New York state economic development power allocation board.*
- 183 *General powers and duties of the board.*
- 184 *Criteria for eligibility for economic development power.*
- 185 *Revitalization programs.*
- 186 *Transfers of economic development power.*
- 187 *Economic development power allocations.*
- 188 *Industrial incentive awards.*
- 188-A *Recharge New York power program.*

§ 182. The New York state economic development power allocation board. There is hereby created a New York state economic development power allocation board, which shall possess the powers and duties herein specified and all the powers necessary or proper to carry out the purposes of this article. The board shall consist of four members, two of whom shall be appointed by the governor and one of whom shall be appointed by the speaker of the assembly and one of whom shall be appointed by the president pro tempore of the senate. Each member shall be appointed for terms of three years or until a successor shall have been named and qualified. The chairman shall be designated by the governor from amongst the members. Three members shall constitute a quorum for the purposes of organizing the board and conducting the business thereof; and no actions of the board may be taken except upon the affirmative vote of at least three members. Videoconferencing may be used for attendance and participation by members of the board. If videoconferencing is used the board shall provide an opportunity for the public to attend, listen and observe at any site at which a member participates. The public notice for the meeting shall inform the public that videoconferencing will be used, identify the locations for the meeting, and state that the public has the right to attend the meeting at any of the locations. Members of the board, except those who are employees or officers of the state, its authorities or agencies shall not receive a salary or other compensation, but shall be allowed the necessary and actual expenses incurred in the performance of duties under this article.

§ 183. General powers and duties of the board. In furtherance of the purposes set forth in this article, the board shall have the following powers:

- (a) To adopt, within one hundred twenty days after appointment, eligibility criteria and rules and regulations relating to the activities of the board.
- (b) To evaluate applications for allocations of economic development power and to make recommendations with respect to such proposed allocations.

(c) To evaluate economic development plans for the use of industrial incentive awards submitted by the power authority of the state of New York pursuant to this article.

(d) To provide advice and assistance when appropriate to applicants on state economic development programs and services in addition to the economic development power and industrial incentive awards specifically provided for in this section.

The department, the power authority of the state of New York, the urban development corporation, and all other state officers, departments, boards, divisions and commissions shall render such services to the board within their respective functions as may be requested by the board.

The board shall solicit applications for economic development power by public notice. Such notice shall be in the form of newspaper advertisements, press releases, and by such other means as the board finds appropriate.

§ 184. Criteria for eligibility for economic development power. Each application for an allocation of economic development power shall be evaluated under criteria adopted by the board. Such criteria shall address, but need not be limited to:

(a) the number of new jobs created as a result of an economic development power allocation;

(b) the applicant's long-term commitment to New York state, as evidenced by the applicant's current and/or planned capital investment in business facilities in New York state;

(c) the ratio of the number of jobs to be created to the amount of economic development power requested by the applicant;

(d) the types of jobs created, as measured by wage and benefit levels, security and stability of employment;

(e) the type and cost of buildings, equipment and facilities to be constructed, enlarged or installed;

(f) the extent to which economic development power will affect the overall productivity or competitiveness of the applicant's business and its existing employment within the state;

(g) the extent to which an allocation of economic development power may result in a competitive disadvantage for other businesses in the state;

(h) the general economic conditions and economic distress in the area in which the applicant's business facility would be located and the extent to which economic development power could contribute to the alleviation of such distress;

(i) 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;

(j) the extent of the applicant's 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 applicant's willingness to satisfy affirmative action goals;

(k) the extent to which an allocation of economic development 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

(l) the impact of the allocation on the operation of any other facilities of the applicant, on other businesses within the state, and upon other electric ratepayers.

§ 185. Revitalization programs. In addition to the criteria described in section one hundred eighty-four of this article and such other criteria as the board may by rule or regulation define, an economic development power allocation may be made to a business in serious, long-term distress that is not primarily caused by normal, short-term changes in the business cycle, when the applicant demonstrates to the satisfaction of the board:

(a) that the applicant has formulated and will implement a comprehensive business revitalization plan which is described in its application, and which:

(1) contains a detailed strategy for actions to be taken by the applicant to continue as a successful business, including, but not limited to, productivity and efficiency improvements, changes in operations, financing or management, measures to enhance labor and management cooperation and to improve the skills and performance of the work force at all levels, capital investment in new equipment and plant modernization, development of new markets and products, and such other actions as will enable the business to stabilize and sustain its operations;

(2) has been endorsed by the board of directors; and

(3) establishes a verifiable schedule for completion of proposed actions;

(b) that an allocation of economic development power will significantly contribute to the revitalization plan;

(c) that the business is likely to close, partially close or relocate out of state resulting in the loss of substantial numbers of jobs;

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

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

(f) 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

(g) that the allocation will not unduly affect the cost of electric

service to customers of the local electricity distributor.

§ 186. Transfers of economic development power. The transfer of an economic development power allocation between facilities of a recipient shall be prohibited unless specifically approved by the board as consistent with the criteria and requirements in sections one hundred eighty-four, one hundred eighty-five and subdivision (g) of section one hundred eighty-seven of this article as may be applicable. Any transfer which occurs without the board's approval shall be invalid and such transfer may subject the recipient to revocation of its allocation and modification or revocation of its contract.

§ 187. Economic development power allocations. (a) Any municipality or municipal agency may, alone or jointly with others, file with the board an application for an economic development power allocation on behalf of a business. Such applications shall be in such form and contain such information, exhibits and supporting data as the board may prescribe. The board shall issue a determination as to the sufficiency of an application or reapplication within twenty days of the receipt thereof. The applicant shall be entitled to timely review and action on the application by the board.

(b) Any applicant authorized to file with the board an application for economic development power may also apply for, purchase and receive a bulk allocation of economic development power for the purpose of entering contracts with eligible businesses. In making such an application, the applicant shall indicate the estimated number of jobs created or retained because of the allocation of economic development power. The board, in acting upon such an application, shall consider, and apply, as appropriate, the criteria and requirements provided for in sections one hundred eighty-four and one hundred eighty-five of this article. All such applications for economic development power shall include a specified period of time to be approved by the board in which the applicant shall execute contracts with businesses for the use of the power from its bulk allocation of economic development power. If the applicant fails to contract for the full amount of the bulk allocation within that specified period, the uncontracted portion of the bulk allocation shall be withdrawn.

(c) The board shall review the applications received and shall determine the applications which best meet the criteria and it shall recommend such applications to the power authority of the state of New York with such terms and conditions as it deems appropriate. Except for allocations subject to subdivision (g) of this section and section one hundred eighty-five of this article, each allocation recommended by the board shall be to serve new electrical demand at facilities at which new jobs are created. Such terms and conditions shall include reasonable provisions providing for the partial or complete withdrawal of the economic development power in the event the recipient fails to maintain mutually agreed levels of employment and power utilization.

(d) Allocations shall be recommended only to or for the use of businesses which normally utilize a minimum peak electric demand of four hundred kilowatts. At least one half of all allocations shall be recommended for applicants within the geographic areas served by Long Island Lighting Company, Consolidated Edison Company of New York, Orange and Rockland Utilities, Incorporated, Central Hudson Gas and Electric Corporation and that part of Westchester, Putnam and Dutchess counties served by New York State Electric and Gas Corporation. No more than fifty percent of the available economic development power shall be recommended for allocation to applicants located within a single municipality except upon the unanimous recommendation of the board.

(e) Recommendation for an allocation of economic development power shall qualify an applicant to enter into a contract for purchase of such power from the power authority of the state of New York pursuant to the terms and conditions of the recommendation. Contracts between an applicant and a business receiving an allocation of economic development power shall be subject to the approval of the power authority of the state of New York. Such contracts and allocations shall provide that the local distributor of electric service will provide customer and billing services upon mutually agreed terms and conditions.

(f) Upon approval or denial of any application for economic development power, the board shall issue in writing a statement of its findings and conclusions with respect to such application and the reasons for its approval or denial.

(g) Within cities of a population of one million or more and the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester, an economic development power allocation may be Recommended for the purpose of job retention by unanimous approval of the board applying the criteria developed pursuant to section one hundred eighty-four of this article and when an applicant on behalf of a business within such city or county demonstrates to the board (a) the business' plans to relocate out of state resulting in the loss of a substantial number of jobs and its commitment to new investments in real property of at least twelve and one-half percent of the effective market value or to relocate within such city or county to comparable facilities, upon receiving an economic development allocation, and (b) that the applicant or the business first has made the greatest practicable use of all other potential assistance and means, including, but not limited to other low-cost power and/or energy, tax and energy cost abatement measures and administrative steps to make possible the business' new investment or relocation. For the purposes of this subdivision, effective market value for special assessing units, as defined in article eighteen of the real property tax law, shall be determined by dividing the assessed value of the property on the latest completed assessment roll by the latest class ratio applicable to the class in which the property is classified, and for all other assessing units, effective market value shall be determined by dividing the assessed value of the property on the latest completed assessment roll

by the final state equalization rate or special equalization rate as promulgated by the commissioner of taxation and finance pursuant to article twelve of the real property tax law.

§ 188. Industrial incentive awards. The power authority of the state of New York shall submit to the board its economic development plan for the use of industrial incentive awards for economic development purposes. The board shall review the proposed plan and shall approve. such plan, in whole or in part, upon its determination that such plan and its implementation is consistent with the criteria and requirements. provided for in sections one hundred eighty-four and one hundred eighty-five of this article and such other criteria as the board may, by rule and regulation, provide with respect to the plan and industrial incentive awards.

§ 188-a. Recharge New York power program. (a) Definitions. For the purposes of this section, the following terms shall have the following meanings:

(1) "Applicable criteria" shall mean the criteria specified in subdivision (c) of this section.

(2) "Authority" shall mean the power authority of the state of New York.

(3) "Recharge New York power allocation" or "allocation" shall mean an allocation of recharge New York power by the power authority of the state of New York pursuant to section one thousand five of the public authorities law to an eligible applicant recommended by the New York state economic development power allocation board in accordance with this section.

(4) "Eligible applicant" shall mean an eligible business, eligible small business, or eligible not-for-profit corporation as defined in this section, provided however, that an eligible applicant shall not include retail businesses as defined by the board, including, without limitation, sports venues, gaming or entertainment-related establishments or places of overnight accommodation.

(5) "Eligible business" shall mean a business other than a not-for-profit corporation which normally utilizes a minimum peak electric demand in excess of four hundred kilowatts.

(6) "Eligible not-for-profit corporation" shall mean a corporation defined in subdivision five of paragraph (a) of section one hundred two of the not-for-profit corporation law.

(7) "Eligible small business" shall mean a business other than a not-for-profit corporation which normally utilizes a minimum peak electric demand equal to or less than four hundred kilowatts.

(8) "Recharge New York power" shall mean and consist of equal amounts of (i) four hundred fifty-five megawatts of firm hydroelectric power from the Niagara and Saint Lawrence hydroelectric projects to be withdrawn from utility corporations that, prior to the effective date of this section, purchased such power for the benefit of their domestic and rural consumers ("recharge New York hydropower"), and (ii) power

procured by the authority through a competitive procurement process, authority sources (other than the Niagara and Saint Lawrence projects) or through an alternate method ("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.

(b) Applications for recharging New York power allocations. (1) The board may solicit applications for recharge New York power allocations. under the program created by this section by public notice beginning no later than February first, two thousand twelve. Such notice may include. newspaper advertisements, press releases, website postings, paper or electronic mailing, and/or such other form of notice as the board finds appropriate in consultation with the authority.

(2) Applications for recharge New York power allocations shall be in the form and contain such information, exhibits and supporting data as the board prescribes in consultation with the authority. A copy of each application received shall be made available for review by each board member, and a copy shall be provided to the authority.

(3) An applicant who is a recipient of a hydroelectric power allocation or benefits supported by the sale of hydroelectric power under another program administered in whole or part by the authority shall be eligible to apply for an allocation under the recharge of New York power program only if it is in substantial compliance with its contractual commitments made in connection with such other program, provided however that an applicant shall not receive a recharge New York power allocation and any other authority power program benefits with respect to the same quantity of electricity consumed at a facility.

(4) Subject to confidentiality requirements, upon receipt of each application from the board, the authority shall promptly notify by electronic means, including website postings and such other methods the board deems appropriate in consultation with the authority, the governor, the speaker of the assembly, the minority leader of the assembly, the temporary president of the senate, the minority leader of the senate, and each member of the state legislature in whose district any portion of the facility for which an allocation is requested is located. Such notice shall provide the name and a description of the applicant, and the address of the facility for which the allocation is requested. The authority shall also develop a listing which contains the name and a description of each applicant, the recharge New York power program allocation sought by each applicant, and the address of the facility for which the applicant requests the allocation, and shall make the listing available for public review on the authority's website.

(c) Review applicable criteria and recommendations. (1) The board shall review applications submitted under the recharge New York power program. The board shall make an initial determination of whether the applicant is an eligible applicant. In the case of an eligible

applicant, the board may recommend to the authority that an allocation of recharge New York power be awarded to an applicant for a facility located in the state of New York based on consideration of the following criteria which shall be considered in the aggregate and no one of which shall be presumptively determinative:

- (i) the significance of the cost of electricity to the applicant's overall cost of doing business, and the impact that a recharge New York power allocation will have on the applicant's operating costs;
- (ii) the extent to which a recharge New York power allocation will result in new capital investment in the state by the applicant;
- (iii) the extent to which a recharge New York power allocation is consistent with any regional economic development council strategies and priorities;
- (iv) the type and cost of buildings, equipment and facilities to be constructed, enlarged or installed if the applicant were to receive an allocation;
- (v) the applicant's payroll, salaries, benefits and number of jobs at the facility for which a recharge New York power allocation is requested;
- (vi) the number of jobs that will be created or retained within the state in relation to the requested recharge New York power allocation, and the extent to which the applicant will agree to commit to creating or retaining such jobs as a condition to receiving a recharge New York power allocation;
- (vii) whether the applicant, due to the cost of electricity, is at risk of closing or curtailing facilities or operations in the state, relocating facilities or operations out of the state, or losing a significant number of jobs in the state, in the absence of a recharge New York power allocation;
- (viii) the significance of the applicant's facility that would receive the recharge New York power allocation to the economy of the area in which such facility is located;
- (ix) the extent to which the applicant has invested in energy efficiency measures, will agree to participate in or perform energy audits of its facilities, will agree to participate in energy efficiency programs of the authority or will commit to implement or otherwise make tangible investments in energy efficiency measures as a condition to receiving a recharge New York power allocation;
- (x) whether the applicant receives a hydroelectric power allocation or benefits supported by the sale of hydroelectric power under another program administered in whole or in part by the authority;
- (xi) the extent to which a recharge New York power allocation will result in an advantage for an applicant in relation to the applicant's competitors within the state; and
- (xii) in addition to the foregoing criteria, in the case of a not-for-profit corporation, whether the applicant provides critical services or substantial benefits to the local community in which the facility for which the allocation is requested is located.

(2) A recommendation by the board that the authority provide a recharge New York power allocation to an eligible applicant shall include, but need not be limited to:

(i) the amount of the recharge New York power allocation the board has determined should be awarded to such eligible applicant, provided however, that the board may recommend a recharge New York power allocation in an amount that is less than the amount requested by such applicant;

(ii) an effective initial term of the allocation and contract between the eligible applicant and the authority which shall not exceed seven years, provided however that the term of any such allocation and contract shall not become effective before July first, two thousand twelve;

(iii) provisions for effective periodic audits of the recipient of an allocation for the purpose of determining contract and program compliance, and for the partial or complete withdrawal of an allocation if the recipient fails to maintain mutually agreed upon commitments, relating to, among other things, employment levels, power utilization, capital investments, and/or energy efficiency measures;

(iv) a requirement for an agreement by the recipient of an allocation to (A) undertake at its own expense an energy audit of its facilities at which the allocation is consumed at least once during the term of the allocation but in any event not less than once every five years, provided, however, that such requirement may be waived or modified by the authority on a showing of good cause by the recipient, and (B) provide the authority with a copy of any such audit or, at the authority's option, a report describing the results of such audit, and provide documentation requested by the authority relating to the implementation of any efficiency measures at the facilities; and

(v) a requirement for an agreement by the recipient of an allocation to (A) make its facilities available at reasonable times and intervals for energy audits and related assessments that the authority desires to perform, if any, at the authority's own expense, and (B) provide information requested by the authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

(3) The board's recommendation shall require that if the actual metered load at the facility where the allocation is utilized is less than the allocation, such allocation will be reduced accordingly, provided that, under its contract with the authority, the recipient shall be afforded a reasonable period within which to fully utilize the allocation, taking into account construction schedules and economic conditions. The authority shall reallocate any withdrawn or relinquished power for the recharge New York power program consistent with paragraph four of this subdivision.

(4) The board may base its recommendation on which eligible applicants it determines best meet the applicable criteria; provided, however, that the board shall dedicate recharge New York power as follows: (i) at

least three hundred fifty megawatts for use at facilities located within the service territories of the utility corporations that, prior to the effective date of this section, purchased Niagara and Saint Lawrence hydroelectric power for the benefit of their domestic and rural consumers; (ii) at least two hundred megawatts for the purposes of attracting new business to the state, creating new business within the state, or encouraging the expansion of existing businesses within the state, that create new jobs or leverage new capital investment; and (iii) an amount not to exceed one hundred fifty megawatts for eligible small businesses and eligible not-for-profit corporations.

(5) The board shall issue a written statement of its findings and conclusions with respect to every application and the reasons for its recommendation to the authority.

(6) A recommendation for a recharge New York power allocation shall qualify an applicant to enter into a contract with the authority pursuant to the terms and conditions of the recommendation by the board and on such other terms as the authority determines to be appropriate.

(7) The board shall not recommend a total of recharge New York power allocations in excess of nine hundred ten megawatts.

(d) The authority shall work cooperatively with the department of public service to recommend to the public service commission reduced rates or an equivalent mechanism for the delivery by utility corporations of recharge New York power program allocations. Any such recommendation for reduced delivery rates shall be at such level as to allow the utility to (i) recover the incremental cost of providing delivery service to such customers, and (ii) contribute to the common delivery and related costs which otherwise would be borne by other customers.

(e) The authority shall, at a minimum, report quarterly to the board on the availability of recharge New York power for the subsequent twelve-month period, the amount of such power allocated and other relevant information.

(f) After an award of a recharge New York power allocation, the board shall accept requests from recipients who at the time of such request are eligible applicants who are in substantial compliance with contractual commitments made in connection with the recharge New York power program for an extension of an existing allocation (i) during the twenty-four-month period immediately preceding the expiration of the term of the allocation, or (ii) at such earlier time with the consent of the authority in writing. Requests for extensions shall be reviewed using the criteria set forth in paragraph one of subdivision (c) of this section.

(g) Transfers of recharge New York power. Notwithstanding any other approval required by statute, regulation or contract, the transfer of a recharge New York power allocation to a different recipient, to a different owner or operator of a facility, or to a different facility is prohibited unless specifically approved by the board as consistent with the criteria and requirements of this section. Any transfer that occurs

without the board's approval shall be invalid and such transfer may subject the transferor to revocation or modification of its allocation and contract.

(h) (1) The board, in consultation with the authority, shall submit to the governor, temporary president of the senate, speaker of the assembly, minority leader of the senate and minority leader of the assembly an evaluation of the effectiveness of the recharge New York power program. Such evaluation shall focus on how the program has aided recipients of power allocations, and may include recommendations for how the program can be made more effective, and shall be based, in part, on the relative costs of power for recipients in comparison to the cost of power for non-recipients. Such evaluation shall be submitted by December thirty-first, two thousand fifteen and by December thirty-first every five years thereafter.

(2) The board, with assistance from the authority, shall maintain the necessary records and data required to perform such evaluation and respond to requests for information pursuant to article six of the public officers' law.