PROGRAM BILL # 2

GOVERNOR'S PROGRAM BILL

2011

MEMORANDUM

AN ACT to amend the economic development law and the public authorities law, in relation to the creation of the recharge New York power program; and to amend the economic development law, the public authorities law, the tax law, chapter 316 of the laws of 1997 amending the public authorities law and other laws relating to the provision of low cost power to foster statewide economic development, and chapter 645 of the laws of 2006 amending the economic development law and other laws relating to reauthorizing the power authority of the state of New York to make contributions to the general fund, in relation to extending the expiration of the power for jobs program and the energy cost savings benefit program; to amend chapter 477 of the laws of 2009, amending the public authorities law relating to energy efficiency and clean energy initiatives of the power authority of the state of New York, in relation to making such provisions permanent and to repeal subdivision 16 of section 1005 of the public authorities law relating to energy audits

PURPOSE:

This bill would create a new permanent, 910 megawatt ("MW") Recharge New York power program ("Recharge N.Y.") administered by the Power Authority of the State of New York ("NYPA") and the Economic Development Power Allocation Board ("EDPAB"), for the purposes of creating and retaining jobs in New York State by attracting businesses to the State, creating new businesses within the State, and encouraging the expansion of existing businesses in the State. The central benefit of the new program would consist of a blend of NYPA hydropower and competitively purchased market power for allocation to eligible businesses and other entities located in the State. The bill would reallocate up to 455 MW of hydroelectric power currently used by domestic and rural consumers to support Recharge N.Y.; extend temporarily and then phase out the existing Power for Jobs ("PFJ") and Energy Cost Savings Benefit ("ECSB") programs; facilitate energy efficiency investments by participating businesses to reduce their operating costs and ensure optimum use of the power allocated under Recharge N.Y.; and provide for measures to help mitigate effects on domestic and rural consumers resulting from the reallocation of NYPA's hydropower resource for Recharge N.Y.

SUMMARY OF PROVISIONS:

Section 1 of the bill would provide the short title of the bill as "recharge New York power program act."

Section 2 of the bill would add a new section 188-a to the Economic Development Law (EDL) to create Recharge N.Y. Section 188-a would, among other things:

- Define terms used in EDL § 188-a.
- Authorize EDPAB to solicit applications for Recharge N.Y. power allocations no later than February 1, 2012, and to make recommendations to NYPA for allocations under the program beginning July 1, 2012.
- Establish who is eligible to receive power allocations under Recharge N.Y.
- Establish notice requirements for applications for Recharge N.Y. power allocations and the Recharge N.Y. application process.
- Establish criteria for a Recharge N.Y. power allocation award, which would include the following:
    - the significance of electricity costs to the applicant;
    - the extent to which an award of Recharge N.Y. power to the applicant would result in new capital investments in the State;
    - the extent to which a Recharge N.Y. power allocation is consistent with any regional economic development council strategies and priorities;
    - the types of facilities the applicant proposes to construct, enlarge, or install as consideration for a Recharge N.Y. power allocation;
    - the payroll, salaries and benefits provided by the applicant;
    - the number of jobs the applicant would create or retain in relation to the size of the Recharge N.Y. power allocation requested;
    - the risk the applicant would leave the State, curtail operations, or lose jobs without the Recharge N.Y. power allocation;
    - the significance of the applicant's facilities to the local economy;
    - the extent to which the applicant has invested in energy efficiency measures, will agree to make tangible investments in energy efficiency measures, or will agree to participate in energy audits of its facilities;
    - whether the applicant receives a hydroelectric power allocation or benefits supported by the sale of hydroelectric power under another program administered in whole or part by NYPA;

- the extent to which a power allocation for the applicant will result in an advantage as compared to its competitors in the State; and
- regarding not-for-profit corporation applicants, whether the applicant provides critical services or substantial benefits to the local community.

- Establish an initial term of up to 7 years for Recharge N.Y. power allocations and related contracts, and authorize extensions of allocations and contracts.

- Authorize reductions of Recharge N.Y. power allocations at facilities if actual metered load is less than the allocation, and reallocation of relinquished or withdrawn Recharge N.Y. power.

- Authorize EDPAB and NYPA to require commitments by applicants, such as agreements by applicants to undertake energy audits of its facilities, to provide NYPA with access to facilities, and to provide NYPA with information on audit results and implementation of audit recommendations.

- Provide that: (1) EDPAB shall not allocate more than 910 MW of Recharge N.Y. power; (2) at least 350 MW of Recharge N.Y. power will be set aside for use at facilities located within the National Grid, New York State Electric and Gas ("NYSEG") and Rochester Gas and Electric ("RG&E") service territories; (3) at least 200 MW of Recharge N.Y. power will be set aside for purposes of attracting business to the State, creating new businesses within the State, or encouraging the expansion of existing businesses in the State that create new jobs or leverage new capital investment; and (4) up to 100 MW of Recharge N.Y. power will be set aside for eligible small businesses and not-for-profit corporations.

- Authorize EDPAB to choose between eligible applicants based on which applicants best meet applicable criteria, require EDPAB to issue recommendations on applications in writing, and provide that a recommendation for Recharge N.Y. power allocation qualifies the applicant to enter into a contract with NYPA on appropriate terms and conditions.

- Provide for the partial and complete withdrawal of Recharge N.Y. power from a recipient for non-compliance with agreed-upon commitments.

- Require NYPA and the Department of Public Service ("DPS") to make recommendations to the Public Service Commission ("PSC") for reduced rates applicable to the delivery by utility corporations of Recharge N.Y. power, and provide that any such recommendations for reduced delivery rates would be at such level as to allow the utility to (1) recover the incremental cost of providing delivery service to such customers, and (2) contribute to the common delivery and related costs which otherwise would be borne by other customers.

- Restrict the transfer of Recharge N.Y. power allocations and contracts.

- Require EDPAB, in consultation with NYPA, periodically to report on the effectiveness of the Recharge N.Y. program.

Section 3 of the bill would add a new Public Authorities Law ("PAL") § 1005(13-a) to authorize NYPA to make Recharge N.Y. power allocations, and to enter into contracts to sell up to 910 MW of Recharge N.Y. power to eligible applicants upon recommendation of EDPAB. This new subdivision would also provide that power used in the Recharge N.Y. consists of: (1) up to 455 MW of hydroelectric power withdrawn from utility corporations to which it had been allocated for the benefit of such corporations' "domestic and rural" consumers; and (2) up to an equal amount of energy procured by NYPA from other sources (so-called "Recharge New York market power"). Recharge N.Y. power allocations would consist of equal parts of NYPA hydropower and the market power and would be sold to eligible applicants on a uniform basis. Subdivision 13-a would further provide that NYPA, prior to entering into a contract with an eligible applicant for the sale of Recharge N.Y. power, and prior to the provision of electric service relating to a Recharge N.Y. power allocation, will offer eligible applicants the option to decline to purchase the market power component of such Recharge N.Y. allocation.

Section 4 of the bill would add a new PAL § 1005(13-b) to authorize NYPA to implement two residential consumer discount programs to help mitigate cost impacts on residential consumers resulting from the reallocation of hydroelectric power for Recharge N.Y. Under the "Residential Consumer Electricity Cost Discount" ("RCECD") program, NYPA would be authorized, as deemed feasible and advisable by its Board of 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 PAL § 1005(13-a). The monthly payments would commence after the hydroelectric power is withdrawn. The total annual amount of the temporary monthly payments for each of the first three 12-month periods following withdrawal of the hydroelectric power will be $100 million. The total annual amount of the monthly payments for each of the two subsequent 12-month periods will be $70 million and $50 million, respectively. Thereafter, the total amount of monthly payments for each 12-month period would be $30 million. Beginning in the second year of the RCECD program, up to $8 million of the payments made that year would be set aside for an "Agricultural Consumer Electricity Cost Discount" program to provide supplemental discounts to agricultural producers who receive electric service at the residential rate. The PSC would supervise the distribution of this funding through jurisdictional utility rates, according to the relative amounts of hydropower purchased by the utilities.

Section 5 of the bill would add a new PAL § 1005(18) to require NYPA to complete detailed annual reports on each economic development power program it administers.

Section 6 of the bill would provide that, with respect to applicants who are in substantial compliance with contractual commitments and receiving benefits under the existing Power for Jobs, Energy Cost Savings Benefit, Economic Development, High Load Factor or Municipal Distribution Agency programs, but who do not receive a recommendation from the EDPAB for a Recharge N.Y. power allocation, EDPAB will recommend that NYPA provide a "transitional electricity discount" through June 30, 2016. The amount of a transitional electricity discount for the period July 1, 2012 through June 30, 2014 would be equivalent to 66 percent of the unit (per kilowatt-hour) value of the savings received by the applicant under the PFJ or ECSB programs during the 12 months ending on December 31, 2010. The amount of a transitional electricity discount for the period July 1, 2014 through June 30, 2016 would be equivalent to 33 percent of the unit (per kilowatt-hour) value of the savings received by the applicant under the PFJ or ECSB programs during the 12 months ending on December 31, 2010.

Section 7 of the bill would amend section 9 (the effective date section) of Chapter 316 of the Laws of 1997 to extend the current sunset of Chapter 316 to June 30, 2012. Chapter 316, among other things, created the PFJ program in EDL § 189.

Section 8 of the bill would amend section 11 (the effective date section) of Chapter 645 of the Laws of 2006 to extend the sunset of section 7 of Chapter 645 to June 30, 2012. Section 7 of Chapter 645 provides for certain responsibilities of NYPA, the Director of the Budget and the Comptroller relating to the PFJ program.

Section 9 of the bill would amend EDL § 183(h)(2) and (4) to extend the current sunset of the ECSB program to June 30, 2012.

Section 10 of the bill would amend the opening paragraph of EDL § 189(a)(5) to extend the current sunset of the PFJ Electricity Savings Reimbursements to June 30, 2012 at the same level as provided under such program during the 12 months ending on December 31, 2010.

Section 11 of the bill would amend EDL § 189(f) and (l) to provide for the extension of Power for Jobs contracts and rebates through June 30, 2012.

Section 12 of the bill would amend Tax Law § 186(9) to extend the taxable period for which a utility that delivers PFJ power is allowed a tax credit through 2012.

Section 13 of the bill would amend subparagraph 2 of paragraph (g) of the ninth undesignated paragraph of PAL § 1005 to authorize NYPA, as deemed feasible and advisable by its Board of Trustees, to make a voluntary contribution to the State of $7.5 million for State Fiscal Year 2010-11 and $6 million for State Fiscal Year 2011-12 to offset losses to the State from the gross receipts tax revenues from PFJ contract extensions. This section would also raise the aggregate amount that NYPA may contribute to the State under the PFJ program to $475,000,000.

Section 14 of the bill would amend PAL § 1005(5) to clarify the purposes for which Niagara and St. Lawrence Project power may be used.

Section 15 of the bill would repeal PAL § 1005(16) (added by Chapter 217 of the Laws of 2009), because that subdivision has been fully implemented and, therefore, is no longer necessary.

Section 16 of the bill would renumber PAL § 1005(16) (added by chapter 477 of the Laws of 2009) as subdivision 17, and amend paragraph (a) of such subdivision to authorize NYPA to offer its energy efficiency programs to Recharge N.Y. participants.

Section 17 of the bill would amend section 2 of chapter 477 of the Laws of 2009 (the effective date section) to permanently authorize NYPA to offer its energy efficiency programs to Recharge N.Y. participants.

Section 18 of the bill would amend the opening paragraph of PAL § 1005(6) to clarify that NYPA may develop, maintain, manage and operate its projects other than the Niagara and Saint Lawrence hydroelectric projects so as to, among other things, provide a supply of power and energy for use in Recharge N.Y.

Section 19 of the bill contains a severability clause.

Section 20 of the bill provides for the bill's effective date.

EXISTING LAW:

The PFJ and ECSB programs expire May 15, 2011.

Chapter 316 of the Laws of 1997 established the PFJ program to provide discounted NYPA-purchased power to businesses and not-for-profit corporations that agree to create or retain jobs in New York State. In return for such commitments, successful applicants received three-year contracts for PFJ electricity. The PFJ program originally made 400 MW of power available and was to be phased in over three years. As a result of the initial popularity of the program, the PFJ statute was amended by Chapter 386 of the Laws of 1998 to accelerate the distribution of the power and increase the size of the program to 450 MW. Chapter 63 of the Laws of 2000 and Chapter 226 of the Laws of 2002 amended the statute to authorize additional power to be allocated under the program and to authorize certain participants to apply for reallocations of power under the program.

Chapter 59 of the Laws of 2004 extended program benefits for PFJ customers whose contracts expired before the end of the PFJ program in 2005. Such customers were required to choose to receive an "electricity savings reimbursement" rebate or a power contract extension. NYPA was authorized to voluntarily fund the rebates if deemed feasible and advisable by NYPA's Trustees.

PFJ customers whose contracts expired on or prior to November 30, 2004 were eligible for a rebate to the extent funded by NYPA from the date their contract expired through December 31, 2005. As an alternative, these customers could have chosen to receive a rebate to the extent funded by NYPA from the date their contract expired as a bridge to a new contract extension, with the contract extension commencing December 1, 2004. The new contract would have been in effect from a period no earlier than December 1, 2004 through the end of the PFJ program on December 31, 2005. PFJ customers whose contracts expired after November 30, 2004 were eligible for rebate or contract extension from the date their contracts expired through December 31, 2005.

Approved contract extensions entitled customers to receive power from NYPA pursuant to a sale-for-resale agreement with the customer's local utility. Separate allocation contracts between customers and NYPA contained job commitments enforceable by NYPA.

In 2005, provisions of the enacted State budget extended the period during which PFJ customers could receive benefits until December 31, 2006. Chapter 645 of the Laws of 2006 included provisions extending program benefits until June 30, 2007. Chapter 89 of the Laws of 2007 included provisions extending program benefits until June 30, 2008. Chapter 59 of the Laws of 2008 included provisions extending program benefits until June 30, 2009. Chapter 217 of the Laws of 2009 included provisions extending program benefits until May 15, 2010. Chapter 88 of the Laws of 2010 extended program benefits until June 2, 2010. Chapter 311 of the Laws of 2010 extended program benefits until May 15, 2011.

Chapter 313 of the Laws of 2005 created the ECSB program. Pursuant to the ECSB program, NYPA makes discounted market power available to 94 businesses in the Economic Development Power, High Load Factor Power and Municipal Distribution Agency Power programs that were facing price increases before the end of 2006. Up to 70 MW of unallocated power from the Niagara Power Project and up to 20 MW of currently unallocated power from the St. Lawrence-FDR Project may be sold into the market to fund the ECSB program.

LEGISLATIVE HISTORY:

This is a new bill.

STATEMENT IN SUPPORT:

New York must take decisive action to put our economy back on track. There are approximately 800,000 New Yorkers unemployed. From 2000 to 2010, New York has lost 288,000 manufacturing jobs. Many businesses and factories have curtailed operations or have closed entirely. In addition to the severe toll the current recession has taken on families, it has also caused a dramatic reduction in revenue to the State, resulting in record State budget deficits, and has reduced the property tax base in our communities, resulting in upward pressure on property taxes for New Yorkers who are already struggling to stay in their homes and communities.

While it is true that the current recession is a global economic problem, it is also true that New York State's challenging business climate has contributed to our fiscal problems. Among the key factors that impact New York's competitiveness compared to other states is energy cost. New York's commercial and industrial electricity rates are double that of states in the south that are competing for business and industrial investment. New York's high energy cost is a factor when existing New York-based companies decide whether to stay open or expand, and when new companies decide in which state to invest. It is critical to retain existing manufacturers and businesses to protect good-paying jobs and to preserve our property tax base, and it is also critical to attract new business investment and create new jobs for the unemployed. A permanent statewide low-cost power program will help achieve these goals.

The current PFJ program provides discounted energy to approximately 500 businesses and non-profits across New York State that employ approximately 300,000 people. Created over a decade ago, PFJ supplies discounted power or cash rebates to companies that retain and create jobs. However, the program will expire in May of this year and these businesses and non-profit corporations will lose access to the program unless action is taken by the Legislature.

The PFJ program has been extended on an annual basis for the last six years. This approach has not served New York well. During this time, the program has not been open to participation by new businesses and existing beneficiaries have been reluctant to invest in their facilities without the assurance that the benefits will continue for multiple years. The year-to-year extensions have also hampered NYPA's ability to effectively administer the programs and execute long term budgeting and hedging strategies. In addition, the last incarnation of the PFJ program lacked critical incentives to reward participating companies that increase their energy efficiency, thereby saving valuable energy and resources not only for themselves, but also for all New Yorkers.

This bill would replace the PFJ program with a permanent statewide economic development program, Recharge N.Y. This new program would provide predictability and stability of power supply with long-term contracts and would provide new selection criteria and tools to encourage energy efficiency investments at the facilities that participate in the program. This would ensure that businesses can invest in their plants with confidence that this program will continue to be available to them, and ensure that the power provided under the program is used as efficiently as possible.

Eligible businesses and institutions that receive Recharge N.Y. power allocations would be allowed to enter contracts for up to seven years, which would provide long-term certainty to encourage new investment and expansion in New York. Recharge N.Y. would reserve at least 350 MW for economic development in the National Grid, NYSEG, and RG&E service territories and 200 MW to attract new investment, thus ensuring that the bill would result in both job retention and job creation. In addition, Recharge N.Y. would reserve 100 MW for not-for-profits, such as hospitals, thus protecting jobs in institutions that provide critical services to our communities.

In summary, the new Recharge N.Y. would help to protect existing jobs, attract new jobs, encourage new investment in the State, and help grow the State's tax base.

Hydropower that would be utilized for the Recharge N.Y. is currently sold by NYPA at cost to National Grid, NYSEG, and RG&E to benefit residential customers under NYPA's domestic and rural program. The value of this benefit in 2010 was approximately $100 million, which equated to an average monthly residential discount of $3.30 per customer. Residential customers in these utility service territories would continue to receive a permanent benefit from

NYPA after the hydropower is reallocated for use in Recharge N.Y. First, over the first five years after the bill is enacted, NYPA would transfer funding to National Grid, NYSEG and RG&E to provide transitional utility bill discounts for residential customers. These transitional discounts would be funded at $100 million per year for the first three years of the program, effectively holding these customers harmless during this time. In the fourth year (2014), the discount would be reduced to $70 million and in the fifth year the discount would be reduced to $50 million. Thereafter, the discount would remain at $30 million per year. The reduced discount would be offset by the expiration in 2014 of the State's temporary "18-a" assessment on utility bills. Up to $8 million of the annual permanent benefit would be set aside for an additional electricity discount for agricultural consumers taking electric service at the residential rate.

BUDGET IMPLICATIONS:

This bill would have no impact on the State budget because the resources for the new Recharge N.Y. power program would be provided by NYPA. Such resources would consist of hydroelectric power and other resources deemed feasible and advisable by the NYPA Trustees.

EFFECTIVE DATE:

This bill would take effect immediately, provided, however, that the amendments to the provisions of law relating to the PFJ and ECSB programs would not affect the expiration of such provisions of law and would be deemed repealed with them.