

***ECONOMIC DEVELOPMENT POWER
ALLOCATION BOARD
MINUTES***

March 26, 2012

Clarence D. Rappleyea Building, White Plains, New York – 2:00 p.m.

***New York Power Authority Office at:
123 Main Street, 16th Floor, White Plains, NY***

1. Approval of the March 26, 2012 Meeting Agenda
2. Approval of the Minutes of the Regular Meeting of September 26, 2011
3. Transfers of Industrial Power
4. Conflict of Interest and Lobbying Contacts Policies
5. Other Business
6. Next Meeting

A regular meeting of the Economic Development Power Allocation Board was held at the following location:

- 1) New York Power Authority, 123 Main Street, White Plains, NY

The following Members of the Board were present:

Samuel Hoyt, Chairman
Eugene L. Nicandri, Member
Robert B. Catell, Member

Bernard McGarry, Member – *Excused from meeting*

Also in attendance were:

Gil Quiniones	President and Chief Executive Officer, NYPA
Judith McCarthy	Executive Vice President and General Counsel, NYPA
James F. Pasquale	Senior Vice President - Marketing & Economic Development, NYPA
Michael Huvane	Vice President Marketing, Business & Municipal Marketing, NYPA
Karen Delince	Corporate Secretary, NYPA
Dennis Eccleston	Vice President Information Technology/Chief Information Officer – Information Technology, NYPA
Timothy Muldoon	Manager – Business Power Allocations and Compliance
Scott N. Fein	Partner, Whiteman, Osterman & Hanna, LLP
Lorna Johnson	Assistant Secretary, NYPA
Sheila Baughman	Senior Secretary, NYPA

Chairman Hoyt welcomed Board members, staff and Mr. Scott Fein, EDPAB's Counsel, to the meeting.

1. Adoption of the Meeting Agenda

The agenda for the March 26, 2012 meeting was unanimously adopted.

2. **Adoption of the Minutes**

The Minutes of the Regular Meeting of September 26, 2011 were unanimously adopted.

3. Transfers of Industrial Power

SUMMARY

The Members of the Economic Development Power Allocation Board (“EDPAB”) are requested to approve and recommend the Power Authority Trustees’ approval of the allocation transfers as detailed below.

BACKGROUND

This is a housekeeping item that comes before the Board several times a year. Economic Development Law (“EDL”) § 186 regarding transfers of economic development power requires that EDPAB approve allocation transfers between facilities in a manner consistent with the criteria and requirements considered in the recommendation of such allocations, as contained in EDL § 184, § 185 and subdivision (g) of § 187, as applicable.

EDPAB is requested to approve transfers of existing economic development allocations to other facilities to reflect business relocations and/ or the movement of personnel and operations of a customer to their other facilities. EDPAB is also requested to approve transfers in the case where a customer has undergone a corporate change of identity. All of the economic development power customers will continue to provide the same products and/or services as they did prior to the transfers. The companies have agreed to continue to honor the terms and conditions of existing contracts with the Authority including job commitments. The reasons for such transfer requests are described below.

EDPAB has approved transfers of this nature in the past.

DISCUSSION

The proposed transferees are as follows:

JP Morgan Chase (“JPMC”), located in Manhattan, provides a broad range of banking and financial products and services around the world. The company has a 24,200 kW allocation of Economic Development Power through the New York City Public Utility Service. The company is requesting a change in how its power allocation is distributed to its facilities to more accurately reflect staffing and operations among its various locations within New York City. JPMC is currently in compliance with their job commitments and will continue to honor all of the terms and conditions of its contract with the Authority.

Kreher’s Poultry Farms (“Kreher’s”), located in Clarence, Erie County, has been in business since 1924. Kreher’s is a third-generation family fresh egg producer in Western New York. The company was originally awarded a 350 kW Power for Jobs (“PFJ”) allocation by the Trustees at their meeting of April 27, 1999. The business conducted by the company remains unchanged and the Clarence location remains the same as well. Due to restructuring, the company is now named Kreher’s Farm Fresh Eggs, LLC. Kreher’s is in compliance with their job commitment. The company will continue to honor all of the terms and conditions of its contract with the Authority.

Luvata Buffalo, Inc. (“Luvata”), located in Buffalo, Erie County, has been in business under various owners since 1906, with this facility in operation since that date. Luvata manufactures copper and brass sheets and rolls. The company has 5,000 kW of PFJ in the form of an electricity savings reimbursement and the allocation is in job compliance. The New York-based company’s parent, Aurubis AG, has created a new corporate entity called Aurubis Buffalo, Inc. Aurubis Buffalo, Inc. will assume all assets and liabilities of Luvata. The location will remain the same, as will the business carried on at the location. Luvata requests that the PFJ allocation be transferred to Aurubis Buffalo, Inc., where the company will continue to honor all of the terms and conditions of its contract with the Authority.

The American Folk Art Museum (“the Museum”) located in Manhattan was founded in 1961, and is a museum devoted to American folk art. The company was originally awarded a 50 kW PFJ allocation by the Trustees at their meeting of May 20, 1999. The company is moving its location to 2 Lincoln Square following the sale of their building to the Museum of Modern Art. The company requests that the Trustees transfer the allocation, including its employment commitment to the Lincoln Square location. The Museum is in compliance with its job commitment.

The Museum's name remains the same, and it will continue to honor all of the terms and conditions of its current contract with the Authority.

RECOMMENDATION

It is recommended that EDPAB approve and recommend the Power Authority Trustees' approval of the allocation transfer as detailed above.

The following resolution was unanimously adopted by members of the Board present.

RESOLVED, That the Economic Development Power Allocation Board hereby authorizes and recommends to the New York Power Authority, the transfer of power allocations for the above customers.

4. Conflict of Interest and Contacts Policies

SUMMARY

The Members of the Economic Development Power Allocation Board (“EDPAB”) are requested to review and approve policies on conflict of interest and contacts, as detailed below.

BACKGROUND AND DISCUSSION

- Conflict of Interest Policy

EDPAB is responsible for making power allocation recommendations to the New York Power Authority (“the Authority”). When making recommendations to the Authority, EDPAB members may have a conflict of interest that derives from his/her involvement with the organization requesting the allocation. Another conflict of interest may arise when an EDPAB member who votes to recommend an allocation also serves on the Authority’s Board of Trustees.

Under the proposed policy, the factors to be considered in determining a conflict of interest is the type of organization involved (e.g., not-for-profit) and whether the member receives compensation.

- Contacts Policy

The proposed Contacts policy provides restrictions on lobbying for ReCharge New York (“RNY”) power allocations in order to comply with EDPAB’s code of ethics and to preserve the integrity of the RNY allocation program.

The policy requires such contacts to be directed to a designated person and imposes a recording requirement.

RECOMMENDATION

It is recommended that Economic Development Power Allocation Board approve the policies attached as Exhibits “A” and “B.”

Mr. Scott Fein said that Section 74 of the Public Officers Law prohibits conflicts and the appearance of conflicts. To that end, staff, with his consultation, developed the proposed Conflict of Interest and Lobbying Contacts policies for the Board’s approval. He said the Conflict of Interest policy addresses the Board members’ concerns regarding conflicts of interest that may arise when recommending allocations of power to the NYPA Board. Mr. Fine then discussed some of the issues of concern to the EDPAB Board members as follows:

- a. An EDPAB member is involved with an Applying Organization that does not qualify as a Not-for-Profit entity;*
- b. An EDPAB member is compensated by a Not-for-Profit Organization*
- c. An EDPAB member is involved with a Not-for-Profit Organization and is not compensated;*
- d. An EDPAB member is also a member of the NYPA Board of Trustees.*

In response to a question from Trustee Eugene Nicandri, Mr. Fein said that if a situation arises which raises an issue of potential conflict his recommendation is to leave the meeting room and have it reflected in the minutes of that meeting.

As regards the new Public Integrity Law to be effective January 2013 and which states, in part, "... entities and individuals who appear before any authority in a representative capacity ...," Mr. Fein suggested that all contacts, including letters, e-mails and telephone calls, to promote, defeat or influence Board members, on behalf of an organization, regarding power allocations, should be reported to the Compliance Officer. In response to a question from Trustee Nicandri, Mr. Fein said that the law exempts local officials from that rule. In response to a question from Chairman Hoyt, Ms. Judith McCarthy said that, if contacted, members should err on the side of caution and fill out the Contact Form and forward it to Mr. James Pasquale or Ms. Karen Delince. Mr. Fein ended by saying that as the new law evolves he will inform staff who will share the information with the Board.

By motions made and seconded the Board approved the Conflict of Interest and Lobbying Contacts Policies.

The following resolution was unanimously adopted by members of the Board present.

RESOLVED, That the Economic Development Power Allocation Board hereby approves the attached Conflict of Interest and Contacts Policy attached below as Exhibits "A" and "B."

**THE ECONOMIC DEVELOPMENT POWER ALLOCATION BOARD
CONFLICT OF INTEREST POLICY**

The Economic Development Power Allocation Board ("EDPAB") is responsible for making power allocation recommendations to the New York Power Authority (NYPA) in accordance with applicable law. The members of EDPAB serve on a volunteer basis, without salary or compensation. This policy addresses the conflict of interest that may arise when EDPAB members have significant involvement (in whatever capacity) with organizations that seek a power allocation recommendation ("Applying Organization") or also serve as members of the NYPA Board.

- A. EDPAB member is involved with an Applying Organization that does not qualify as a Not for Profit
 - 1. The member must not participate in the preparation of the power application; and
 - 2. The member must recuse himself/herself from any discussion or vote on the power application; and
 - 3. The minutes of the Applying Organization should record the recusal from discussion and vote; and
 - 4. The member must recuse himself/herself from any discussion or vote on EDPAB board; and
 - 5. EDPAB minutes must record recusal from EDPAB discussion and vote.

- B. EDPAB member is compensated by a Not-for-Profit Applying Organization
 - 1. Follow the same procedures outlined in Section A, above.

- C. EDPAB member is involved with a Not-for-Profit Applying Organization and is not compensated
 - 1. The member must not participate in the preparation of the power application; and
 - 2. The member must recuse himself/herself from any discussion or vote on the power allocation; and
 - 3. The minutes of the Applying Organization should record the recusal from discussion vote; and
 - 4. The member may then vote on the power allocation under consideration before EDPAB; and
 - (a) The EDPAB minutes record the nature of the member's involvement in the Applying Organization and the fact that the member recused himself/herself from the preparation, discussion and vote of the power application before that organization; and
 - (b) If EDPAB makes its recommendation to the NYPA Board, it must provide a detailed summary of the circumstances attending the vote (including the member's involvement in the Applying Organization and his or her recusal from any discussion and vote before such organization.

- D. EDPAB member is also a member of the NYPA Board of Trustees
 - 1. EDPAB member may vote on whether to recommend the power application of the Applying Organization; and
 - 2. EDPAB member, who has voted on such an application, must recuse himself/herself from discussion and vote before NYPA Board on the EDPAB recommendation; and
 - 3. Minutes of the NYPA Board must record the fact and reasons for recusal from discussion and vote on such recommendation.

**ECONOMIC DEVELOPMENT POWER ALLOCATION BOARD
CONTACT POLICY**

SCOPE

In order to maintain the integrity of the process of allocating power and energy and in furtherance of the New York Power Authority ("NYPA") and the Economic Development Power Allocation Board's ("EDPAB") commitment to transparency and accountability of its decisions, this policy imposes contact restrictions on the allocation process and institutes a centralized recording system.

IMPLEMENTATION

This policy shall be adhered to by all members of EDPAB and NYPA employees, officers and trustees.

DEFINITIONS

Definitions. As used in this policy:

(a) The term "lobbyist" shall mean any person or organization retained, employed or designated by any client to influence the EDPAB or NYPA decision making.

(b) The term "contact" shall mean any oral, written or electronic communication with relevant entities under circumstance where a reasonable person would infer that the communication was intended to influence a decision regarding the allocation of low cost energy.

MANAGEMENT CONTROLS

Members of EDPAB and NYPA employees, officers and trustees who are contacted by a lobbyist regarding the allocation of power and energy shall:

1. Direct the lobbyist to the designated person, who shall be the Senior Vice President of Marketing & Economic Development and
2. Make a contemporaneous record of such contact containing the day and time of the contact, the identity of the lobbyist and a general summary of the substance of the contact. (See Contact Form) and
3. Forward a completed Contact form to the Corporate Secretary for recordkeeping at Secretarys.office@nypa.gov.

5. Other Business

Recharge New York Program

Chairman Hoyt asked Mr. James Pasquale to brief the Board on status of the ReCharge New York Power Program. Mr. Pasquale said that staff has received more than 1,000 applications, to date. The applications' requests total approximately 1900 MW of power for retention purposes; under the law, 610 MW of power is available for allocation for retained load. Staff is diligently reviewing the applications and anticipates making the first recommendations of power under the new program for the Board's approval in April. Mr. Pasquale also said that, since the applicants expected the initial allocations of power to be awarded in March, a press release would be issued today stating that the first allocations will be made in April. Mr. Michael Huvane will also be sending e-mails to all applicants in this regard.

Chairman Hoyt thanked staff for their efforts in reviewing and analyzing the large number of applications.

6. **Next Meeting**

The next meeting of the Board will be held on Tuesday, April 24, 2012 at 10:00 a.m.