

# **APPLICATION GUIDELINES FOR WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND BENEFITS**

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## **APPLICATION GUIDELINES FOR WESTERN NEW YORK ECONOMIC DEVELOPMENT FUND BENEFITS**

### **A. The 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 New York Power Authority (“NYPA”). It is funded with the aggregate excess of revenues received by NYPA from the sale of Expansion and Replacement Power 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 Expansion or Replacement Power customer. Fund monies paid to a successful applicant is known as “Fund Benefits.”

The role of the Western New York Power Proceeds Allocation Board (the “Board”) is to administer the application process for Fund Benefits, review and evaluate applications against prescribed criteria, and make recommendations to NYPA for the award of Fund Benefits. Awards of Fund Benefits are made by NYPA’s Board of Trustees.

### **B. The Guidelines and related Documents**

In accordance with Economic Development Law (“EDL”) § 189-c, the Board has adopted these “Guidelines for Applications for Fund Benefits from the Western New York Economic Development Fund” (“Guidelines”) for the purpose of assisting persons who wish to apply for Fund Benefits.

The Board has also adopted “Procedures for the Review of Applications for Fund Benefits” (“Procedures”). Applicants are advised to consult the Procedures before filing an application for Fund Benefits. By submitting an Application for Fund Benefits, an applicant is consenting to be subject to the Guidelines and Procedures.

The Board has also adopted a formal application entitled “Western New York Economic Development Fund Application for Fund Benefits” (“Application”). Only this form of Application may be used to apply for Fund Benefits.

### **C. Eligible Applicants and Eligible Projects**

Only applications for Fund Benefits submitted by Eligible Applicants for Eligible Projects will be considered for a recommendation for an award of Fund Benefits.

**Incomplete** applications will not be considered for award. If an application is deemed incomplete the applicant will be notified within 20 days of receipt of the application.

An “Eligible Applicant” is a private business, including a not-for-profit corporation.

**Municipalities, Public Benefit Corporations and Government Entities are NOT ELIGIBLE** for Fund Benefits.

An “Eligible Project” is an economic development project by an Eligible Applicant that is physically located within the State of New York (“State”) within a thirty (30) mile radius of the New York Power Authority’s (NYPA) Niagara Power Project in Lewiston, New York. *See Page 12.*

Generally speaking, Eligible Projects are those that support the growth of business in the State and thereby lead to the creation or maintenance of jobs and tax revenues for the state and local governments.

The following are **examples** of Eligible Projects:

- entrepreneur support/services and workforce development;
- energy-related projects, programs and services;<sup>1</sup>
- capital investments in buildings, equipment, and associated infrastructure (collectively, "infrastructure") owned by an Eligible Applicant for Fund Benefits;
- transportation projects under state or federally approved plans;
- the acquisition of land needed for infrastructure;
- research and development where the results of such research and development will directly benefit New York State and
- support for tourism and marketing and advertising efforts for Western New York and Finger Lakes Regional tourism and business.

**As dictated by the Western New York Power Proceeds Allocation Act a minimum of 15% of the funds awarded will go to “energy-related projects, programs and services”.<sup>1</sup>**

The following are **not** Eligible Projects for Fund Benefits:

- Municipalities, Public Benefit Corporations and Government Entities
- public interest advertising or advocacy;
- lobbying;
- the support or opposition of any candidate for public office;
- the support or opposition to any public issue;
- legal fees related to litigation of any kind;
- expenses related to administrative proceedings before state or local agencies; and
- retail businesses, including by way of example, sports venues, gaming and gambling or entertainment-related establishments;<sup>2</sup>
- residential properties; and
- places of overnight accommodation.

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1 In accordance with EDL § 189-a(6), “energy-related projects, programs and services” means: (1) energy efficiency projects and services; (2) clean energy technology projects and services; (3) high performance and sustainable building programs and services; and (4) the construction, installation and/or operation of facilities or equipment done in connection with any such projects, programs or services.

2 In accordance with EDL § 189-a(5), the Board defines “retail business” to mean a business that is primarily used in making retail sales of goods or services to customers who personally visit such facilities to obtain goods or services.

## D. Overview of Funding Tracks

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As further detailed below, Fund Benefits (funds being allocated from the Western New York Economic Development Fund) can be used to fund various economic development projects/activities. The below application tracks have been created to ease the applicants process by making each applicant answer only the questions that are relevant to the applicants project. On page 3 of the Application you will find the definition of each funding track, as well as instructions on which sections of the application must be completed for each track relevant to the applicant project. **Please DO NOT fill out any track information that does not apply to the applicant project.**

### Tracks Include:

#### Business Investment

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- Business Investments are expenditures that facilitate an employer's ability to create new jobs in New York State or retain jobs that are otherwise in jeopardy. Within the Business Investment Track, five-year job commitments will be required of all beneficiaries; it is by underwriting these job commitments that the Allocation Board is best able to forecast the economic benefits of providing assistance to any particular project. Applicants will therefore be required to commit to the number of jobs At Risk that will be retained by the proposed project, the number of new jobs that will be created by the project, and the average salaries of each. Failure to achieve or maintain these employment commitments may subject a beneficiary to potential recapture of assistance.

#### Infrastructure/Downtown Investment

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- Fund Benefits will be used to finance infrastructure investments in order to attract new businesses and expand existing businesses, thereby fostering further investment. Infrastructure investments are capital expenditures for infrastructure including transportation, water and sewer, communication, and energy generation and distribution.
- Downtown neighborhoods – whether major commercial areas of big cities or one block stretches of village main streets – are important generators of economic activity in New York State. In an effort to strengthen these cores of commerce, funding can support projects that are likely to increase density, sustainable development and tourism, including cultural institutions and streetscape improvements.

#### Innovation/Entrepreneur Development

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- Designing a plan that brings new technologies and/or products to the marketplace, increases new start ups in strategic industries and facilitates the commercialization of products that can lead to job growth in the Region.

#### Workforce Development

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- Identifying high concentrations of underemployed and underrepresented populations in a Region and creating programs that will train those populations to match the needs of Industry in the Region.

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### **Tourism Marketing**

- Develop a strategy to capitalize on the Region's natural assets to increase tourist traffic and tourist revenues; develop a strategy that increases the amount of time each tourist spends in the Region; raise the profile of the Region as a national and international destination; connect multiple tourist destinations in the Region.

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### **Agricultural Investment**

- Increasing the Agricultural Profile of the Western New York Region. This can be achieved through projects which: increase local access to markets; create new products; increase production; reduce production costs; create and implement Regional marketing strategies; create connections between research and farming; create jobs and careers in agriculture; and increase the value of a Regional brand.

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Job creation and retention are two key indicators of economic activity. However, the Allocation Board recognizes that certain investments may increase productivity and revitalize communities without immediately increasing permanent employment. Therefore, job creation/retention commitments are only required for the Business Investment Track. Failure to achieve and maintain job commitments may subject a beneficiary to potential recapture of assistance. While other tracks are not required to commit to job growth/retention, clear demonstration of economic development benefits to the region will be considered in allocation awards.

The Fund seeks to promote economic development by financing investment in the area of Western New York in which Eligible Projects must be physically located – within a thirty mile radius of NYPA's Niagara Power Project located in Lewiston, New York. Although funding is offered prior to project commencement as an inducement to undertake an Eligible Project, the Allocation Board will generally disburse Fund Benefits in arrears, as reimbursement for expenses undertaken by the project. Progress payments may be provided for subject to the terms and conditions of a funding contract with the Eligible Applicant (discussed below).

Fund Benefits can be used for a relatively broad range of hard costs, soft costs and working capital. There are several important caveats, as follows:

- The following items are generally limited to a certain percentage of total project costs:
- Real Estate and Construction
  - Land acquisition: limited to 25% of total project costs.
  - Acquisition of existing businesses or other assets, including land: limited to 50% of total project costs in the Business Investment Track and 25% of total project costs in the Downtown Redevelopment Track.
  - Soft costs: limited to 25% of total project costs.
- For Business Investment Track applicants funding will generally be limited to 20% of total project costs.

- The following items may be included in budgets presented for consideration, but Proceeds funds may not be used to pay them:
  - Expenditures incurred prior to NYPA Trustee’s approval of funding allocation.
  - Standard developer fees.
- Assets being acquired must be reflected in the budget at a level at or below fair market value. If an Applicant proposes acquiring an asset from an affiliate or related entity, the value of that asset must be verified independently.

## **E. Application, Approval & Disbursement Process**

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### **Review and Recommendation Process**

The Allocation Board will review Applications after the close of the specified solicitation period. No priority will be attached to any properly-filed Application based on the date such Application was filed.

The Board reserves the right to reject any Application that is filed after a filing deadline prescribed by the Board, or that provides incomplete, inaccurate or unresponsive information.

The Board reserves the right to reject any Application that has or will have unresolved factors preventing the project from moving the Project from start to completion.

The Board or the Board’s designee may require any applicant to provide additional information in support of an Application. The Board reserves the right to reject the Application of any applicant who fails to timely provide additional information so requested.

Changes to a timely-filed Application may only be made with the consent of the Board or a Board member or the Board’s designee for good cause shown. The Board or the Board’s designee may require any applicant to file an amended Application or new Application based on the nature of any proposed changes to a previously-filed Application.

The Board will review complete and properly-submitted Applications based on the following criteria:

1. The extent to which an award of Fund Benefits would be consistent with and help implement the strategies and priorities of the Regional Economic Development Council (“REDC”) having responsibility for the region in which an Eligible Project is located.<sup>3</sup> The Western New York

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<sup>3</sup> As provided for in EDL § 189-c(4), criteria 3-15 are adapted from the criteria for eligibility for Expansion Power, Replacement Power and Preservation Power under Public Authorities Law § 1005. The specific criteria identified in PAL § 1005(13)(b)(4)-(5) are relevant to power allocations under these programs but do not have any logical application to allocations of Fund Benefits. Therefore, the Board does not expect to use these criteria to evaluate applications for Fund Benefits. Additionally, in accordance with PAL § 1005(13), criteria 13-15 listed herein will only be used in the case of Eligible Projects which are proposed by Applicants as, and determined by the Board to be, “revitalization” projects.

Regional Economic Development Council which is responsible for Eligible Projects in Erie and Niagara Counties Strategies & Priorities are:

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- Promote Smart Growth by investing in areas that infrastructure already exists and achieves certain goals, such as: preserving historic buildings; reviving downtowns; reviving Main Streets; investing in existing neighborhoods; and investing in former industrial sites. A project consistent with Smart Growth will also focus on: enhancing walkability; enhancing multiple modes of transportation; connecting disadvantaged communities to employment clusters; spurring mixed use private investment in existing communities and preserving/enhancing natural lands and or resources.
  - Promote Workforce Development by: increasing diversity in the labor force; developing and cultivating a workforce that gives workers advancement potential; creating employment opportunities for communities with underemployed, unemployed and under-represented populations; aligning education and skills training to the current and future needs of industry.
  - Foster entrepreneurship and new business formation and growth. Designing a plan that brings new technologies and/or products to the marketplace, increases new start ups in strategic industries and facilitates the commercialization of products that can lead to job growth in the Region.
  - Increase the industry profile of agriculture in WNY by: creating better access to markets; creating new products; creating new more efficient processes; creating strong regional brands; creating programs that promote careers in agriculture.
  - Utilize Western New York's proximity to Canadian and U.S. population centers to advance economic development in WNY. Bi-national projects will: utilize cross-border planning to create transportation and logistical infrastructure; improve operational relationships; promote the attractiveness of WNY as a hub for global trade.
  - Position the region as a global energy hub through new sources of clean energy, energy efficiency and energy efficient transportation.
  - Support growth of advanced manufacturing by making research more available to manufacturers to help them innovate.
  - Spur growth in the Health and Life Sciences industry through improved commercialization, recruit high profile research talent and reducing the cost burden of healthcare while improving health outcomes.
  - Expand the scope of Higher Education by increasing accessibility to Higher Education for communities that currently have limited access to educational opportunities; better aligning education with the industry needs and creating support structures for start-ups which will assist start-ups with commercialization, business planning, workforce preparation, facilities, etc.
  - Grow visitors and visitor spending by raising the profile of WNY as a national and international destination; connect multiple tourist destinations in WNY.
  - For more information on the Western New York Regional Economic Development Council please go to <https://regionalcouncils.ny.gov/western-new-york>
2. The extent to which an award of Fund Benefits would be consistent with the strategies and priorities of the Regional Economic Development Council ("REDC") having responsibility for the



region in which an Eligible Project is located.<sup>4</sup> The Finger Lakes Regional Economic Development Council which is responsible for Eligible Projects in Orleans and Genesee Counties Strategies & Priorities can be found at: <https://regionalcouncils.ny.gov/finger-lakes>.

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3. The number of jobs that would be created as a result of an award of Fund Benefits.
  4. The Applicant's long term commitment to the region.
  5. The ratio of the number of jobs to be created to the amount of Fund Benefits requested.
  6. The types of jobs that would be created, as measured by wage and benefit levels, security and stability of employment.
  7. The amount of capital investment, including the type and cost of buildings, equipment and facilities, proposed to be constructed, enlarged or installed.
  8. The extent to which an award of Fund Benefits would affect the overall productivity or competitiveness of the Applicant and its existing employment.
  9. The extent to which an award of Fund Benefits may result in a competitive disadvantage for other business in the State.
  10. The growth potential of the Applicant's facilities and the contribution of economic strength to the area in which the Applicant's facilities are or would be located.
  11. The extent of the Applicant's willingness to satisfy affirmative action goals.
  12. The impact of an award of Fund Benefits on the operation of any other facilities of the Applicant, and on other businesses within the region.
  13. The extent to which an award of Fund Benefits 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
  14. That the business is likely to close, partially close or relocate resulting in the loss of a substantial number of jobs. That the business is an important employer in the community and efforts to revitalize the business are in long-term interests of both employers and the community.
  15. That a reasonable prospect exists that the proposed award of Fund Benefits will enable the Applicant to remain competitive and become profitable and preserve jobs for a substantial period of time.
  16. And any other relevant criteria as determined by the Board.
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Subject to an Applicant's compliance with these Guidelines, the Allocation Board will render a decision on each Application that is submitted. The Allocation Board's decision will be reflected in written findings and conclusions. Only Applications for which the Board has made a recommendation concerning an award of Fund Benefits will be forwarded to NYPA's Board of Trustees for further action. A decision by the Allocation Board that an applicant is not an Eligible Applicant or that a project is not an Eligible Project will not be forwarded to NYPA's Board of Trustees for further action.

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<sup>4</sup> As provided for in EDL § 189-c(4), criteria 2-15 are adapted from the criteria for eligibility for Expansion Power, Replacement Power and Preservation Power under Public Authorities Law § 1005. The specific criteria identified in PAL § 1005(13)(b)(4)-(5) are relevant to power allocations under these programs but do not have any logical application to allocations of Fund Benefits. Therefore, the Board does not expect to use these criteria to evaluate applications for Fund Benefits. Additionally, in accordance with PAL § 1005(13), criteria 13-15 listed herein will only be used in the case of Eligible Projects which are proposed by Applicants as, and determined by the Board to be, "revitalization" projects.

The Allocation Board may, in its discretion, include proposed terms and conditions relating to any recommended award, including, but not limited to, reasonable provision for the allocation of Fund Benefits over time as the Eligible Applicant achieves milestones toward completion of an Eligible Project, and the partial or complete withdrawal or return of Fund Benefits where an Eligible Applicant has failed to achieve or maintain agreed upon commitments.

All Allocation Board recommendations for Fund Benefits are subject to the review and approval of NYPA's Board of Trustees. The NYPA Board of Trustees has discretion as to whether to adopt the Allocation Board's recommendation, or to award Fund Benefits in a different amount or on different terms and conditions than those contained in the recommendation of the Allocation Board.

The application period is one which is rolling. This means that applications may be submitted for consideration at any time following the initial release of the application on March 4, 2013. Application due dates are posted as deadlines for review. Each application due date coincides with a date in which an award determination will be made. Any application submitted to the WNYPPAB is subject to available funding.

**Please submit one PDF copy to [angela.rossi@nypa.gov](mailto:angela.rossi@nypa.gov) by 12pm on the application due date.** Only complete applications will be considered by the Board.

Awards will be documented in the form of an offer letter outlining the terms of the proposed assistance, which is conditioned upon approval of the NYPA Trustees. Terms for the disbursement of assistance are included in the offer letter.

**Incomplete** applications cannot be considered for an award. If an application is deemed incomplete the applicant will be notified within 20 days of receipt of the application. Only complete applications will be considered by the Board.

## GLOSSARY

Term	Definition
<b>At Risk</b>	A Full-time Permanent Employee position currently located in New York State that is found by the Allocation Board to be at risk of being lost or moved out of State based on compelling information provided by an Eligible Applicant.
<b>Brownfield Opportunity Area</b>	An area that has been approved for funding under New York State's Brownfield Opportunity Area program for the purpose of establishing a community-based revitalization plan and implementation strategy to achieve Brownfield redevelopment in a proactive and systematic way. Visit the following link for a partial listing: <a href="http://nyswaterfronts.com/BOA_projects.asp">http://nyswaterfronts.com/BOA_projects.asp</a> .
<b>Distressed Census Tract</b>	A census tract that, according to the most recent census data available, has (a) a poverty rate of at least 20% for the year to which the data relate; and (b) an unemployment rate of at least 1.25 times the statewide unemployment rate for the year to which the data relate.
<b>Full-Time Employee</b>	A full-time, permanent, private sector employee on Applicant's payroll who works at the project location for a minimum of 35 hours per week for not less than 4 consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by the applicant to other employees of comparable rank and duties; or 2 part-time, permanent, private sector employees on Applicant's payroll who work at the project location for a combined minimum of 35 hours per week for not less than 4 consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by Applicant to other employees of comparable rank and duties.
<b>Minority Group Member</b>	A United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (i) Black persons having origins in any of the Black African racial groups; (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race; (iii) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands; and (iv) Native American or Alaskan native persons having origins in any of the original peoples of North America.
<b>Minority or Women-Owned Business Enterprise</b>	An entity that has been certified by the New York State Division of Minority and Women's Business Development as a Minority or Women-Owned Business Enterprise.

## **F. Other Considerations**

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The final terms and conditions applicable to an award of Fund Benefits will be set forth in a contract ("Fund Benefits Contract") with the Eligible Applicant. The contract will include all appropriate terms and conditions relating to the award of Fund benefits.

Fund Benefits Contracts may be subject to the review and approval of other State officials and regulatory authorities.

### **PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MWBEs**

WNYPPAB is required to comply with and implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

Approval of funding by NYPA, is conditioned upon and subject to the following requirements:

- a) Recipient agrees to fully comply and cooperate with NYPA in the implementation of New York State Executive Law Article 15-A. These requirements include contracting opportunities for MWBEs.
- b) Recipient's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, other applicable federal, state or local laws.
- c) For purposes of providing meaningful participation by MWBEs on the project and achieving the project goals established herein, Recipient should reference the directory of New York State Certified MWBEs found at the following internet address:

<https://ny.newnycontracts.com/>.

Additionally, Recipient is encouraged to contact ESD's Office of Contractor and Supplier Diversity at [OCSD@ESD.NY.GOV](mailto:OCSD@ESD.NY.GOV) to discuss additional methods of maximizing participation by MWBEs on the project.

