

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY
EXISTING FACILITIES PROGRAM





Summary of Revisions

The following changes have been made to PON 1219, the Existing Facilities Program:

Solicitation Revisions – Calendar Year 2012:

Applications will be accepted on a first-come, first-served basis through December 31, 2015, or until funds are exhausted.

As of January 1, 2012, NYSEERDA's Industrial and Process Efficiency Program will accept Performance-Based Natural Gas incentive applications. National Fuel Gas customers that use less than 12,000 Mcf annually may also be eligible for Pre-Qualified or Performance-Based Natural Gas incentives through NYSEERDA's Existing Facilities Program.

Also as of January 1, 2012, NYSEERDA's Combined Heat and Power Performance-Based incentive program is closed, and is no longer accepting applications. The Combined Heat and Power component has been removed from the Existing Facilities Program PON. Historical program information can be found for reference purposes at: nyserda.ny.gov/chp

Solicitation Revisions – Calendar Year 2011:

Applications will be accepted on a first-come, first-served basis through December 31, 2011, or until funds are exhausted.

As of August 9, 2011, the Existing Facilities and Industrial and Process Efficiency Programs received applications for Natural Gas efficiency projects that will commit budgeted funds. NYSEERDA's Existing Facilities and Industrial and Process Efficiency Programs stopped accepting Performance-Based and Pre-Qualified Gas efficiency applications except for National Fuel Gas customers that use less than 12,000 Mcf annually on August 9, 2011.

As of July 1, 2011, the deadline for Demand Response and Combined Heat and Power applications has been extended from June 30, 2011 until November 30, 2011, or until funds are exhausted. Also, unless otherwise approved by NYSEERDA, Performance-Based projects must qualify for an incentive of at least \$30,000. Smaller projects may qualify for Pre-Qualified incentives.

As of March 25, 2011, the Agriculture Energy Efficiency Program stopped accepting applications on that date as it was expected to exceed current funding available on or before that date.



NYSERDA offers objective information and analysis, innovative programs, technical expertise, and funding to help New Yorkers increase energy efficiency, save money, use renewable energy, and reduce their reliance on fossil fuels. NYSERDA professionals work to protect our environment and create clean-energy jobs. A public benefit corporation, NYSERDA has been developing partnerships to advance innovative energy solutions in New York since 1975.

Albany



Syracuse



Rochester



Buffalo



New York City





Existing Facilities Program
Financial Incentives
Program Opportunity Notice (PON)

TABLE OF CONTENTS

Program Overview

Pre-Qualified.....	2
Performance-Based.....	3
Who is Eligible.....	4
How to Apply.....	5

Performance-Based Incentives

Electric and Natural Gas Efficiency.....	6
Demand Response.....	7
Monitoring-Based Commissioning.....	8
Industrial and Process Efficiency.....	9

For Further Assistance.....	11
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Terms and Conditions.....	12
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PROGRAM OVERVIEW

PRE-QUALIFIED

The New York State Energy Research and Development Authority's Existing Facilities Program offers Pre-Qualified incentives for electric and natural gas efficiency projects.

Pre-Qualified Incentive Categories	Maximum Incentive per Facility
Electric	\$30,000
Natural Gas	\$30,000 \$25,000

Pre-Qualified incentives are provided to encourage Applicants to purchase and install more energy-efficient equipment for small-sized energy projects and equipment replacement projects. Incentives are available on a dollar per unit basis for Pre-Qualified energy efficiency measures. Applicants can receive up to \$30,000 in Pre-Qualified electric incentives per facility per calendar year. National Fuel Gas customers using less than 12,000 Mcf per year can receive a maximum natural gas incentive of \$25,000 per facility.

Pre-Qualified incentives are available for:

- Lighting
- Motors
- Variable Frequency Drives (VFDs)
- HVAC
- Chillers
- Commercial Refrigeration
- Commercial Kitchen Equipment and Washers
- Interval Meters
- Natural Gas Equipment

Please see the Pre-Qualified Measure Worksheets, which can be found at nyserda.ny.gov/existing-facilities for specific eligibility criteria.

For information on How To Apply please see page 5.



PROGRAM OVERVIEW

PERFORMANCE-BASED

The Existing Facilities Program offers incentives to encourage Applicants to implement cost-effective energy efficiency projects that deliver verifiable annual energy savings. Projects must meet minimum incentive thresholds to be eligible for Performance-Based incentives. See individual program sections below for more detail.

Performance-Based projects require an Engineering Analysis to substantiate energy savings and may be subject to Measurement and Verification (M&V). Facilities seeking cost-shared studies to identify and prioritize energy efficiency opportunities are encouraged to participate in NYSERDA's FlexTech Program nyserdera.ny.gov/flextech.



Electric and Natural Gas Efficiency incentives are offered to offset capital costs of cost-effective energy efficiency projects that reduce energy consumption at an eligible facility.

Demand Response (DR) incentives are offered to offset a portion of the technology costs that enable facilities to participate in Demand Response programs.

Monitoring-Based Commissioning (MBCx) incentives are offered to support the implementation of continuous commissioning programs, as well as protocols and systems that promote persistent and measurable operational-based energy savings.

Industrial and Process Efficiency (IPE) incentives are offered to offset the costs of energy productivity projects at manufacturing and data center sites. The focus is on increasing productivity and process efficiency, reducing waste, and reducing energy consumption per unit of production or data processed.

Performance-Based Incentive Categories ¹			
	Upstate	Downstate	Maximum Incentive per Facility
Electric Efficiency	\$0.12/kWh	\$0.16/kWh	\$2,000,000
Energy Storage	\$300/kW	\$600/kW	\$2,000,000
Natural Gas Efficiency	\$15/MMBtu ²	Closed	\$200,000 \$25,000
Demand Response	\$100/kW	\$200/kW	\$2,000,000
Monitoring-Based Commissioning	\$0.05/kWh	\$0.05/kWh	\$500,000
Industrial and Process Efficiency	\$0.12/kWh \$15/MMBtu	\$0.16/kWh \$20/MMBtu	\$5,000,000

1: The incentive rates shown above are based on annual energy savings. Incentives are determined by multiplying the annual energy savings by the rates shown.

2: Available only for National Fuel customers.

PROGRAM OVERVIEW

WHO IS ELIGIBLE

To be eligible, a facility must pay into the System Benefits Charge (SBC) as electric and/or natural gas distribution customers through one of the following utility companies:

Utility Company	Electric	Natural Gas
The Brooklyn Union Gas Company d/b/a National Grid NY*		✓
Central Hudson Gas & Electric Corporation	✓	✓
Consolidated Edison Company of New York, Inc.*	✓	✓
KeySpan Gas East Corporation d/b/a National Grid (KEDNY/KEDLI)*		✓
National Grid Generation d/b/a National Grid	✓	✓
National Fuel Gas Distribution Corporation		✓
New York State Electric & Gas Corporation	✓	✓
Orange and Rockland Utilities, Inc.	✓	✓
Rochester Gas and Electric Corporation	✓	✓

* Denotes downstate utility companies.

Note: Only certain service rate classes are eligible. Please check the facility's current utility bill.

DEFINITIONS

Applicant: The entity receiving the approved incentive amount upon project completion, and who will be responsible for delivering the energy savings. Applicants can include third parties such as Energy Service Companies (ESCOs), facility owners, management companies, and/or tenants with the authority to make improvements.

Facility: The building or structure where the energy-efficient measures are being implemented.

Customer: The owner/operator/tenant of the facility or space where the project will be implemented.

Project: The plan for the implementation of eligible measures at a specified facility.

DEADLINE AND SCHEDULE

Applications will be accepted on a first-come, first-served basis through 5:00 pm EST on December 31, 2015, or until funds are exhausted.

IMPORTANT NOTES

- Up to 12 months of utility bills may be requested to verify your facility's annual System Benefits Charge (SBC) contribution. Proration of incentives based on SBC contribution is at NYSERDA's discretion.
- Projects with simple payback periods greater than 18 years (excluding NYSERDA incentives) are ineligible.
- The total incentive cannot exceed 50% of the project cost for most projects. For Demand Response projects and projects that bundle electric and/or natural gas efficiency and Demand Response, the total incentive cannot exceed 75% of the project cost. Project cost may include equipment, labor, and engineering expenses.
- Projects are ineligible if they have a simple payback period less than:
 - Manufacturing and Data Centers: 6 months
 - Commercial and Institutional: 1 year
 NYSERDA's incentives will be adjusted to ensure these payback thresholds are adhered to.
- All measures must achieve savings for at least five years.
- Unless otherwise approved by NYSERDA, Performance-Based projects must qualify for an incentive of at least \$30,000. Smaller projects may qualify for Pre-Qualified incentives (see page 2).
- An Applicant or a facility may receive through NYSERDA either a Pre-Qualified incentive or a Performance-Based incentive for a particular energy efficiency measure, but not both. Similarly, an Applicant or facility may receive an incentive for a specific energy efficiency measure either through NYSERDA or one of the utility companies listed on this page, but not both.
- All applications will be reviewed and accepted or rejected at NYSERDA's discretion. **NYSERDA will evaluate projects for cost-effectiveness through a Total Resource Cost (TRC) evaluation prior to issuance of a Purchase Order. Applicants may be required to provide NYSERDA with additional information necessary to complete evaluation of the application.**

PROGRAM OVERVIEW

HOW TO APPLY

PRE-QUALIFIED INCENTIVES

Step 1. Check the appropriate Pre-Qualified Measures Worksheets on the Existing Facilities website nyserdera.ny.gov/existing-facilities to make sure that all proposed equipment meets the specified eligibility criteria.

Step 2. Complete the project: purchase, install, and commission the proposed equipment.

Step 3. Within 90 days of project completion, complete an online Consolidated Funding Application. Scan and attach the following required documentation:

- The applicable Pre-Qualified Measure Worksheets

- A current, complete utility bill documenting the System Benefits Charge
- Equipment specification sheets supporting applicable eligibility criteria
- Equipment invoices verifying purchase and installation

Be sure to finalize and submit your application. You will then receive a confirmation email.

Step 4. NYSERDA will evaluate the application. Contacts for eligible projects will be asked to authorize a form online. If approved, incentives will be paid directly to the Applicant.

OR

PERFORMANCE-BASED INCENTIVES

Step 1. Before or within 90 days of contracting, and prior to any demolition or removal of existing equipment or installation of new equipment for the project, complete an online Consolidated Funding Application. Scan and attach the following required documentation:

- A current, complete utility bill documenting the System Benefits Charge
- Proposed equipment specification sheets supporting applicable eligibility criteria
- Anticipated energy savings calculations (for lighting projects, fill out the Lighting Form found at nyserdera.ny.gov/existing-facilities)

Be sure to finalize and submit your application. You will then receive a confirmation email.

Step 2. NYSERDA will evaluate the application. Contacts for eligible projects will be asked to authorize a form online. If approved, a Purchase Order will be issued to the Applicant. The Applicant will have two years from the issue date of the Purchase Order to complete the project.

Step 3. The Applicant submits an Engineering Analysis for NYSERDA's approval. The Engineering Analysis includes, but is not limited to, project description, detailed energy savings calculations, and economic evaluation.

Step 4. NYSERDA or a NYSERDA assigned Technical Consultant reviews the Engineering Analysis and con-

ducts a pre-installation inspection. NYSERDA may request revisions to the Engineering Analysis as necessary. After the pre-installation site inspection and approval of the Engineering Analysis, NYSERDA will notify the Applicant and facility contact that they can implement the project. (An Applicant proceeding with demolition or installation before NYSERDA conducts a pre-installation inspection and reviews the Engineering Analysis does so at the risk of becoming ineligible.)

Step 5. The Applicant implements the project and notifies NYSERDA that the project is complete and ready for a post-installation inspection.

Step 6. The Applicant revises the Engineering Analysis to reflect post-installation conditions and submits it to NYSERDA's assigned Technical Consultant. NYSERDA conducts a post-installation inspection and collects relevant documentation, including invoices, and any other remaining items.

Step 7. Upon approval of all final deliverables, NYSERDA issues the full incentive for projects not requiring Measurement and Verification (M&V) to the Applicant, and partial payment for projects requiring M&V. Those projects requiring M&V must be completed in accordance with the approved Engineering Analysis. When the M&V is complete, NYSERDA reviews the results and releases the remaining funds. Final incentive levels may be adjusted based on data gathered during post-installation inspection and/or within the M&V results.

Important Participation Process Note:

Demand Response projects must demonstrate participation in an approved Demand Response program; see page 8 for more details.

PERFORMANCE-BASED INCENTIVES

ELECTRIC AND NATURAL GAS EFFICIENCY

Performance-Based electric and natural gas incentives are offered for cost-effective energy efficiency projects that deliver verifiable annual energy savings. Incentives are also provided for peak demand reductions associated with energy or thermal (ice) storage systems.

Electric and Natural Gas Incentive Rates		
Category	Upstate	Downstate
Electric Efficiency	\$0.12/kWh	\$0.16/kWh
Energy Storage	\$300/kW	\$600/kW
Natural Gas Efficiency	\$15/MMBtu ¹	\$20/MMBtu Closed
Electric Efficiency Bonus Incentive		
Super Efficient Chiller Bonus	\$1,400/kW - Full Load or \$1,000/kW - NPLV	\$1,400/kW - Full Load or \$1,000/kW - NPLV

1: Only for National Fuel customers who use less than 12,000 Mcf per year. There is no minimum project size and the total incentive cannot exceed the lesser of \$25,000 or \$15/MMBtu.

Eligible Measures:

Electric	Natural Gas
Lighting	Furnaces/boilers
Motors	Water heaters
Variable Frequency Drives (VFDs)	Steam/hot water distribution piping insulation
Energy Management Systems (EMS)	Heat recovery (example: flue gas economizers)
HVAC	

Applicants considering projects related to measures not listed above should contact NYSERDA to discuss eligibility.

See the Technical Guidance documents on the Existing Facilities Program web site for additional information: nyserderda.ny.gov/existing-facilities.

Minimum Efficiency – All equipment covered by ENERGY STAR® must meet the ENERGY STAR® minimum efficiencies.

Ineligible Projects include Power Quality, Power Factor improvements, and fuel switching.

Super Efficient Electric Chiller Bonus (SECB)

Water-cooled electric chillers greater than or equal to 300 tons may be eligible for a bonus if the proposed efficiencies exceed the associated ASHRAE Standard 90.1 2007 [Addendum 'm'] for centrifugal chillers by specified levels.

Measurement and Verification (M&V)

M&V is required for:

- Lighting projects saving more than 1,000,000 kWh annually
- Electric efficiency projects saving more than 500,000 kWh annually
- ~~Natural gas efficiency projects saving more than 5,000 MMBtu annually~~ Closed
- At NYSERDA's discretion, M&V may be required or waived for any project

The Applicant must create an M&V plan in collaboration with NYSERDA's Technical Consultant. NYSERDA will pay 60% of the incentive upon installation and the balance after NYSERDA receives and approves the final M&V report. Final incentive levels will be adjusted based on the M&V results. Projects failing to perform to M&V savings estimates may be required to reimburse NYSERDA for any overpayment.

How To Get Started – NYSERDA's Existing Facilities Program team can help identify and prioritize projects that will maximize energy savings. NYSERDA's team is available to:

- Consult with customers and Applicants about eligibility
- Schedule site visits
- Assist customers and Applicants with the application process

Applicants interested in participating should contact: EFPOutreach@nyserderda.org.

PERFORMANCE-BASED INCENTIVES

DEMAND RESPONSE (DR)

Performance-Based Demand Response incentives are offered to offset the cost of equipment that enables facilities to participate in Demand Response programs. Common measures include: load shedding controls, automation equipment and new generation equipment.

Demand Response Incentive Rates		
Category	Upstate	Downstate
Demand Response	\$100/kW	\$200/kW
Bonus Incentives - Fleet Integrated Demand Response		
Room Air Conditioners	\$100/kW	\$100/kW
Load-Shedding Ballasts	\$50/kW	\$50/kW

Existing generating equipment is ineligible for funding.

All Facilities must register in the New York Independent System Operator’s (NYISO’s) Special Case Resource (SCR) Program, Demand Side Ancillary Services Program (DSASP), or a utility Demand Response program. NYSERDA incentives for kW reductions will not exceed the kW committed to those respective programs.

Generator projects must be located within Consolidated Edison territory to be eligible for funding. New generators must meet the most recent manufacturing New Source Performance Standards:

- Effective on and after January 1, 2011:
Engines less than or equal to 173 HP must be Tier 3, and engines greater than 173 HP must be Tier 4 Interim.

If future DEC regulations are stricter than these requirements, then DEC regulations will supersede these requirements.

Generator Run Hours – Generators must run only during Demand Response events and for limited testing or emergency purposes.

BONUS INCENTIVES - FLEET INTEGRATED DEMAND RESPONSE

Bonus incentives are available for “fleet” installation of new Demand Response-enabled room air conditioners (window, through-the-wall, PTAC & PTHP) and load shedding ballasts. Bonus incentives are offered to offset the cost of adding integrated/tamper-proof direct load control and shedding capability to the fleet.

Room Air Conditioner Bonus:

- Minimum project size of 100 enabled window, through-the-wall, PTAC or PTHPs in a single facility; 7,000 Btu cooling or larger
- Bonus incentive of \$100/kW of direct load control capacity added to the fleet
- Maximum bonus incentive of \$350,000 per project
- Air conditioners must be ENERGY STAR®, and PTAC/PTHPS must meet the Energy Conservation Construction Code of New York State
- Verification of proper disposal of decommissioned air conditioners is required

Load-Shedding Ballasts Bonus:

- Bonus incentive of up to \$50/kW of load shedding capacity enabled by a load-shed ballast system
- Maximum bonus incentive of \$150,000 per project
- Lighting must meet the applicable eligibility criteria stated under the Performance-Based electric efficiency incentives
- The entire enabled load-shed capacity must be registered with the NYISO Installed Capacity (ICAP) SCR program



PERFORMANCE-BASED INCENTIVES MONITORING-BASED COMMISSIONING (MBCx)

Performance-Based, Monitoring-Based Commissioning (MBCx) incentives are offered for cost-effective energy efficiency projects that deliver verifiable annual energy savings resulting from the installation of information gathering technologies that provide critical data to monitor and alter building operations. Additionally, NYSERDA seeks to promote clear communication of energy usage to the occupants of commercial and industrial spaces, thereby facilitating a coordinated means to reduce consumption and lower costs.

MBCx Incentive Rates

Category	Upstate	Downstate
Electric Efficiency	\$0.05/kWh	\$0.05/kWh

Project Cost - MBCx incentive payments are intended to cover the materials and engineering costs associated with upgrading energy data collection hardware and the cost of energy management services needed to achieve energy savings. Facilities seeking an initial retro-commissioning audit are encouraged to participate in NYSERDA's FlexTech Program nyserdera.ny.gov/flextech.

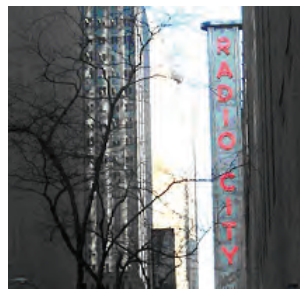
Persistence - MBCx incentives are provided for upgrades and initiatives that generate energy savings based upon improved operation. Eligible savings must be quantified by an Engineering Analysis and a commissioning plan designed to ensure the persistent realization of energy efficiency based upon operational changes for a period of at least five years.

Persistence must be demonstrated through externally contracted monitoring services or scheduled in-house staff training. Documentation of persistence may include invoices, scope of services, and training materials. Incentive applications missing, in whole or in part, an initial scope targeting the monitoring, isolation and assurance of claimed energy savings may be rejected at NYSERDA's discretion.

Ineligible Projects - Include, but are not limited to, occupant behavior-based initiatives such as turning off lighting or closing blinds to reduce internal heat gain, and operational improvements without continuous enhanced monitoring capability.

Bundling - Applicants submitting MBCx projects involving comprehensive energy management system upgrades or additions are encouraged to pursue additional incentives for energy efficiency or Demand Response where applicable.

Measurement and Verification (M&V) - All MBCx projects must provide, to NYSERDA, ongoing access to the project's energy data. The Applicant must perform M&V for a period of up to two years. MBCx projects will be subject to a 40% withholding of the total incentive, which is payable to the Applicant after NYSERDA receives and approves the final M&V report. Final incentive levels may be adjusted based on data gathered during post-installation inspection and/or M&V results. Projects failing to perform to M&V savings estimates may be required to reimburse NYSERDA for any overpayment.



PERFORMANCE-BASED INCENTIVES INDUSTRIAL AND PROCESS EFFICIENCY (IPE)

Performance-Based Industrial and Process Efficiency (IPE) incentives are offered for cost-effective projects that improve energy efficiency and productivity at manufacturing and data center facilities. The IPE program is designed to encourage projects that reduce energy usage per unit of production or computing. Projects may include those that increase productivity and capacity, enhance reliability, and/or increase uptime.

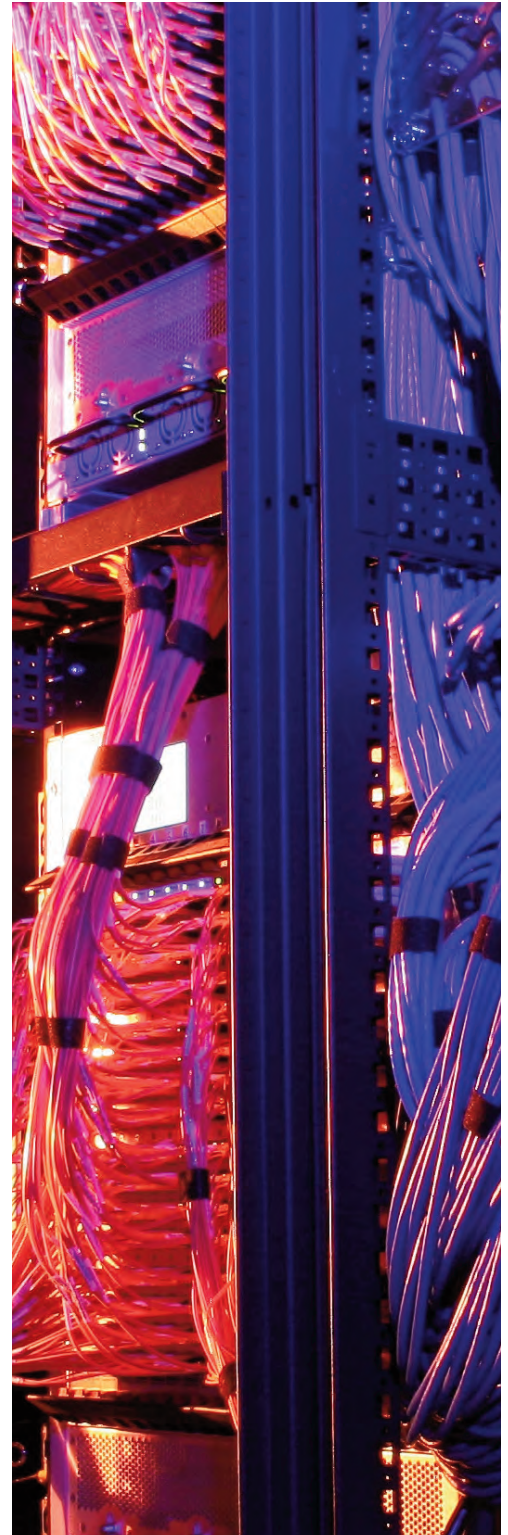
Incentives – Performance-Based incentives for both electric and natural gas projects are available for the custom and site-specific use of commercially available technology. Incentives are based on one year’s energy savings from installed projects. IPE projects must qualify for an incentive of at least \$30,000.

Industrial and Process Efficiency Incentive Rates			
Category	Utility	Upstate	Downstate
Capital Incentives	Electric	\$0.12/kWh	\$0.16/kWh
	Natural Gas	\$15/MMBtu	\$20/MMBtu
Operational Incentives	Electric	\$0.05/kWh	\$0.05/kWh
	Natural Gas	\$6/MMBtu	\$6/MMBtu
Incentive Caps	50% of project cost		
	\$5 million/facility		

How To Get Started – NYSERDA’s Industrial and Process Efficiency team can help identify and prioritize projects that will maximize energy productivity savings. NYSERDA’s team is available to:

- Consult with customers and Applicants about eligibility
- Schedule site visits
- Assist customers and Applicants with the application process

Applicants interested in IPE opportunities should contact: IPEOutreach@nyserderda.org



PERFORMANCE-BASED INCENTIVES INDUSTRIAL AND PROCESS EFFICIENCY (IPE)

Eligible energy efficiency improvements include, but are not limited to:

	Facility Capital	Process Improvements	Operational & Maintenance*
I N D U S T R I A L	Lighting	Scrap reduction	Burner replacement
	VSDs	Throughput increases	Steam trap repair/maintenance
	Motors	LEAN/Six Sigma projects	Process controls optimization
	Compressors	Process retooling or overhaul	Compressed air pressure reduction; leak repair/maintenance
	HVAC	Improvements on the standard or existing method for production	
	Chillers		
	Heat recovery		
D A T A C E N T E R	Cooling	Virtualization	Server power management
	Air-flow management	Storage consolidation	Air flow controls optimization
	Humidification	Next-generation servers	Dynamic temperature monitoring and adjustment
	UPS system upgrades	Application/server management	
	Power distribution	Server load prioritization and optimization	

* Operational and Maintenance incentives follow the Monitoring Based Commissioning (MBCx) incentive requirements. See page 9.

Applicants considering projects related to measures not listed above should contact NYSERDA to discuss eligibility.

Industrial projects reduce energy consumed per unit of production.

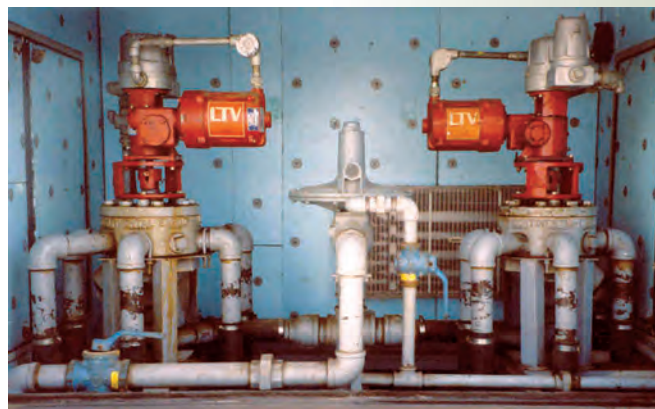
Data Center projects reduce energy consumed per unit of computing.

Measurement and Verification (M&V)

M&V is required for:

- Lighting projects saving more than 1,000,000 kWh annually
- Electric efficiency projects saving more than 500,000 kWh annually
- Natural gas efficiency projects saving more than 10,000 MMBtu annually
- At NYSERDA's discretion, M&V may be required or waived for any project

NYSERDA's technical consultants will create an M&V plan in collaboration with the Applicant. NYSERDA will pay 60% of the incentive upon installation and the balance after NYSERDA receives and approves the final M&V report.



FOR FURTHER ASSISTANCE

For more information or assistance with the application process please contact a NYSERDA-contracted representative:

Agriculture

EnSave, Inc.
Phone: 1.800.732.1399
Email: acep@nyserda.org

Commercial Real Estate

HR&A Advisors
Phone: 212.977.5597
Email: FocusCRE@nyserda.org

Data Centers

Willdan Energy Solutions
Phone: 212.785.0292
Email: IPEOutreach@nyserda.org

Health Care

Luthin Associates
Phone: 1.866.774.8818
Email: healthcare@nyserda.org

Hospitality

KEMA
Phone: 1.866.904.8027
Email: hospitality@nyserda.org

Industrial

CHA
Phone: 585.232.5610 x 290
Email: IPEOutreach@nyserda.org

Or

ERS, Inc.
Phone: 212.789.8182
Email: IPEOutreach@nyserda.org

Institutions, K-12 School, State Sector

TRC Solutions
Phone: 703.442.9181
Email: gcoleman@trcsolutions.com

Local Government

Malcolm Pirnie
Phone: 877.717.6841
Email: localgovernment@nyserda.org

Municipal Water/Wastewater

Malcolm Pirnie
Phone: 518.250.7328
Email: smarpicati@pirnie.com

Universities

EYP
Phone: 1.866.330.7317
Email: HigherEd@nyserda.org



EXHIBIT A
EXISTING FACILITIES PROGRAM TERMS & CONDITIONS

1. Approval

Incentives are not payable unless NYSERDA has approved the Engineering Analysis, conducted site visits, and approved the other activities and documentation provided by the applicant.

2. Amounts Payable

The Purchase Order is an upset amount, based on the applicants estimate of savings. The final payment will be based on the approved savings, Project cost, and M&V results, when required. NYSERDA also reserves the right to seek a refund for incentives paid if, at any time, it learns that the Project was not actually and properly installed or has subsequently been disconnected.

3. Cost and Invoice Documentation

Upon completion of the post-installation inspection, and at any other time upon NYSERDA's request, the Applicant shall provide NYSERDA copies of all invoices (including all materials, labor, and equipment discounts) reflecting the costs of purchasing and installing the Project. The invoices shall include a breakdown of all equipment purchased for installation under this Agreement (the application and these Terms and Conditions). In addition, NYSERDA may request any other reasonable documentation or verification of the cost to the Applicant of purchasing and installing the equipment.

4. Incentive Payments

NYSERDA shall pay the incentive upon the applicants' meeting the requirements of the Existing Facilities Program. This includes, but is not limited to; (1) installation of the Project in the identified building is completed, (2) all necessary documentation is provided, and (3) NYSERDA has verified installation costs and satisfactory installation of the Project, all in accordance with the specifications.

5. Inspections, Follow-up Visits and On-Site Monitoring

- (a) NYSERDA reserves the right to make a reasonable number of pre- and post-installation visits to the Facility. Such visit(s) will be at a time convenient to the Applicant and made with at least one week advance notice to the Applicant by NYSERDA.
- (b) Generally, the purpose of the follow-up visit(s) is to evaluate the installed Project in order to determine the actual kW reduction and energy savings for program evaluation purposes.

6. Changes in the Program

These Terms & Conditions may be changed by NYSERDA at any time without notice. Approved applications, however, will be processed to completion under the Terms & Conditions in effect at the time of application to NYSERDA.

7. Indemnification

The Applicant shall protect, indemnify, and hold harmless NYSERDA and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against NYSERDA or the State of New York resulting from, arising out of or relating to the performance of this Agreement. The obligations of the Applicant under this section shall survive any expiration or termination of this Agreement.

8. No Warranties

- (a) NYSERDA does not endorse, guarantee, or warrant any particular manufacturer or product, and NYSERDA provides no warranties, expressed or implied, for any product or services. The applicant's reliance on warranties is limited to any warranties that may arise from, or be provided by contractors, vendors, etc.
- (b) The Applicant acknowledges that neither NYSERDA nor any of its consultants are responsible for assuring that the design, engineering and construction of the Project is proper or complies with any particular laws, codes, or industry standards. NYSERDA does not make any representations of any kind regarding the results to be achieved by the Project or the adequacy or safety of such measures.

9. Limit of Incentive Payments

NYSERDA reserves the right, for any reason, to stop approving incentive applications at any time without notice.

10. Release by the Applicant

The acceptance by the Applicant of final payment shall release NYSERDA from any and all claims and liability the applicant, its representatives, and assigns might otherwise have relating to this award.

11. Title to equipment

Title to all of the equipment purchased under this Agreement shall vest with the Facility.

12. Vendor Selection

NYSERDA has the right not to allow a vendor or contractor to participate in this program.

13. Removal of Equipment

The Applicant agrees, as a condition of participation in the program, to remove and dispose of the equipment being replaced by the Project in accordance with all laws, rules, and regulations.

14. Miscellaneous

This Agreement (the application and these Terms and Conditions) is the entire agreement between the parties and supersedes all other communications and representations.

15. Audit

The Applicant shall keep, maintain, and preserve for a period of five years after receipt of the incentives, full and detailed books, accounts, and records pertaining to the performance of this Agreement. NYSERDA shall have the right from time to time and at all reasonable times during this period to inspect and audit any and all books, accounts and records at the office or offices of the Applicant where they are then being kept, maintained and preserved. Any payment made under this Agreement shall be subject to retroactive reduction for amounts included therein that are found by NYSERDA on the basis of any audit of the Applicant by an agency of the United States, State of New York or NYSERDA not to constitute an allowable change or cost hereafter.

EXHIBIT B
PART 504 PROMPT PAYMENT POLICY STATEMENT

1. Section 504.1: Purpose and Applicability

- (A) The purpose of this Part is to implement section 2880 of the Public Authorities Law by detailing the authority's policy for making payment promptly on amounts properly due and owing by the authority under contracts. This Part constitutes the authority's prompt payment policy statement as required by that section.
- (B) This Part generally applies to payments due and owing by the authority to a person or business in the private sector under a contract it has entered into with the authority on or after May 1, 1988. This Part does not apply to payments due and owing:
 - (1) under the Eminent Domain Procedure Law;
 - (2) as interest allowed on judgments rendered by a court pursuant to any provision of law except Section 2880 of the Public Authorities Law;
 - (3) to the federal government; to any state agency or its instrumentalities; to any duly constituted unit of local government, including but not limited to counties, cities, towns, villages, school districts, special districts or any of their related instrumentalities; to any other public authority or public benefit corporation; or to its employees when acting in, or incidental to, their public employment capacity;
 - (4) if the Authority is exercising a legally authorized set-off against all or part of the payment; or
 - (5) if other State or federal law or rule or regulation specifically requires otherwise.

EXHIBIT B
PROMPT PAYMENT POLICY STATEMENT (CONTINUED)

2. Section 504.2: Definitions as used in this part, the following terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

- (A) "Authority" means the New York State Energy Research and Development Authority.
- (B) "Contract" means an enforceable agreement entered into between the Authority and a contractor.
- (C) "Contractor" means any person, partnership, private corporation, or association:
 - (1) selling materials, equipment or supplies or leasing property or equipment to the Authority pursuant to a contract;
 - (2) constructing, reconstructing, rehabilitating or repairing buildings, highways or other improvements for, or on behalf of, the Authority pursuant to a contract; or
 - (3) rendering or providing services to the Authority pursuant to a contract.
- (D) "Date of payment" means the date on which the Authority requisitions a check from its statutory fiscal agent, the Department of Taxation and Finance, to make a payment.
- (E) "Designated payment office" means the Office of the Authority's Controller, located at 17 Columbia Circle, Albany, New York 12203.
- (F) "Payment" means provision by the Authority of funds in an amount sufficient to satisfy a debt properly due and owing to a contractor and payable under all applicable provisions of a contract to which this Part applies and of law, including but not limited to provisions for retained amounts or provisions that may limit the Authority's power to pay, such as claims, liens, attachments or judgments against the contractor that have not been properly discharged, waived or released.
- (G) "Prompt payment" means a payment within the time periods applicable pursuant to Sections 504.3 through 504.5 of this Part in order for the Authority not to be liable for interest pursuant to Section 504.6.
- (H) "Payment due date" means the date by which the date of payment must occur, in accordance with the provisions of Sections 504.3 through 504.5 of this Part, in order for the Authority not to be liable for interest pursuant to Section 5.06.
- (I) "Proper invoice" means a written request for a contract payment that is submitted by a contractor setting forth the description, price or cost, and quantity of goods, property or services delivered or rendered, in such form, and supported by such other substantiating documentation, as the Authority may reasonably require, including but not limited to any requirements set forth in the contract; and addressed to the Authority's Controller, marked "Attention: Accounts Payable," at the designated payment office or submitted electronically to invoices@nyserda.org. (J)(1) "Receipt of an invoice" means:
 - (i) if the payment is one for which an invoice is required, the later of:
 - (a) the date on which a proper invoice is actually received in the designated payment office during normal business hours; or
 - (b) the date by which, during normal business hours, the Authority has actually received all the purchased goods, property or services covered by a proper invoice previously received in the designated payment office.
 - (ii) if a contract provides that a payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice the 30th calendar day, excluding legal holidays, before the date so specified or predetermined.
- (J)(2) For purposes of this subdivision, if the contract requires a multifaceted, completed or working system, or delivery of no less than a specified quantity of goods, property or services and only a portion of such systems or less than the required

goods, property or services are working, completed or delivered, even though the Contractor has invoiced the Authority for the portion working, completed or delivered, the Authority will not be in receipt of an invoice until the specified minimum amount of the systems, goods, property or services are working, completed or delivered.

- (K) "Set-off" means the reduction by the Authority of a payment due a contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the contractor to the Authority.

3. Section 504.3 Prompt payment schedule

Except as otherwise provided by law or regulation or in Sections 504.4 and 504.5 of this Part, the date of payment by the Authority of an amount properly due and owing under a contract shall be no later than 30 calendar days, excluding legal holidays, after such receipt.

4. Section 504.4 Payment procedures

- (A) Unless otherwise specified by a contract provision, a proper invoice submitted by the contractor to the designated payment office shall be required to initiate payment for goods, property or services. As soon as any invoice is received in the designated payment office during normal business hours, such invoice shall be date-stamped. The invoice shall then promptly be reviewed by the Authority.
- (B) The Authority shall notify the contractor within 15 calendar days after receipt of an invoice of:
 - (1) any defects in the delivered goods, property or services;
 - (2) any defects in the invoice; and
 - (3) suspected improprieties of any kind.
- (C) The existence of any defects or suspected improprieties shall prevent the commencement of the time period specified in Section 504.3 until any such defects or improprieties are corrected or otherwise resolved.
- (D) If the Authority fails to notify a contractor of a defect or impropriety within the 15 calendar day period specified in subdivision (b) of this section, the sole effect shall be that the number of days allowed for payment shall be reduced by the number of days between the 15th day and the day that notification was transmitted to the contractor. If the Authority fails to provide reasonable grounds for its contention that a defect or impropriety exists, the sole effect shall be that the payment due date shall be calculated using the original date of receipt of an invoice.
- (E) In the absence of any defect or suspected impropriety, or upon satisfactory correction or resolution of a defect or suspected impropriety, the Authority shall make payment, consistent with any such correction or resolution and the provisions of this Part.

5. Section 504.5 Exceptions and extension of payment due date

The Authority has determined that, notwithstanding the provisions of Sections 504.3 and 504.4 of this Part, any of the following facts or circumstances, which may occur concurrently or consecutively, reasonably justify extension of the payment due date:

- (A) If the case of a payment, which a contract provides will be made on a specific date or at a predetermined interval, without having to submit a written invoice, if any documentation, supporting data, performance verification, or notice specifically required by the contract or other State or federal mandate has not been submitted to the Authority on a timely basis, then the payment due date shall be extended by the number of calendar days from the date by which all such matter was to be submitted to the Authority and the date when the Authority has actually received such matter.
- (B) If an inspection or testing period, performance verification, audit or other review or documentation independent of the contractor is specifically required by the contract or by other State or federal mandate, whether to be performed by or on behalf of the Authority or another entity, or is specifically permitted by the contract or by other State or federal provision and the Authority or other entity with the right to do so elects to have such activity or documentation undertaken, then the payment due date shall

be extended by the number of calendar days from the date of receipt of an invoice to the date when any such activity or documentation has been completed, the Authority has actually received the results of such activity or documentation conducted by another entity, and any deficiencies identified or issues raised as a result of such activity or documentation have been corrected or otherwise resolved.

(C) If an invoice must be examined by a State or federal agency, or by another party contributing to the funding of the contract, prior to payment, then the payment due date shall be extended by the number of calendar days from the date of receipt of an invoice to the date when the State or federal agency, or other contributing party to the contract, has completed the inspection, advised the Authority of the results of the inspection, and any deficiencies identified or issues raised as a result of such inspection have been corrected or otherwise resolved.

(D) If appropriated funds from which payment is to be made have not yet been appropriated or, if appropriated, not yet been made available to the Authority, then the payment due date shall be extended by the number of calendar days from the date of receipt of an invoice to the date when such funds are made available to the Authority.

6. Section 504.6 Interest eligibility and computation

If the Authority fails to make prompt payment, the Authority shall pay interest to a contractor on the payment when such interest computed as provided herein is equal to or more than ten dollars. Interest shall be computed and accrue at the daily rate in effect on the date of payment, as set by the New York State Tax Commission for corporate taxes pursuant to Section 1096(e)(1) of the Tax Law. Interest on such a payment shall be computed for the period beginning on the day after the payment due date and ending on the date of payment.

7. Section 504.7 Sources of funds to pay interest

Any interest payable by the Authority pursuant to this Part shall be paid only from the same accounts, funds, or appropriations that are lawfully available to make the related contract payment.

8. Section 504.8 Incorporation of prompt payment policy statement into contracts

The provisions of this Part in effect at the time of the creation of a contract shall be incorporated into and made a part of such contract and shall apply to all payments as they become due and owing pursuant to the terms and conditions of such contract, notwithstanding that the Authority may subsequently amend this Part by further rulemaking.

9. Section 504.9 Notice of objection

Unless a different procedure is specifically prescribed in a contract, a contractor may object to any action taken by the Authority pursuant to this Part that prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to the Authority. Such notice shall be signed and dated and concisely and clearly set forth the basis for the objection and be addressed to the Vice President, New York State Energy Research and Development Authority, at the address set forth in Section 504.2(e). The Vice President of the Authority, or his or her designee, shall review the objection for purposes of affirming or modifying the Authority's action. Within 15 working days of the receipt of the objection, the Vice President, or his or her designee, shall notify the contractor either that the Authority's action is affirmed or that it is modified or that, due to the complexity of the issue, additional time is needed to conduct the review; provided, however, in no event shall the extended review period exceed 30 working days.

10. Section 504.10 Judicial Review

Any determination made by the Authority pursuant to this Part, which prevents the commencement of the time in which interest will be paid is subject to judicial review in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules. Such proceedings shall only be commenced upon completion of the review procedure specified in Section 504.9 of this Part or any other review procedure that may be specified in the contract or by other law, rule, or regulation.

11. Section 504.11 Court action or other legal processes

(A) Notwithstanding any other law to the contrary, the liability of

the Authority to make an interest payment to a contractor pursuant to this Part shall not extend beyond the date of a notice of intention to file a claim, the date of a notice of a claim, or the date commencing a legal action for the payment of such interest, whichever occurs first.

(B) With respect to the court action or other legal processes referred to in subdivision (a) of this section, any interest obligation incurred by the Authority after the date specified therein pursuant to any provision of law other than Public Authorities Law Section 2880 shall be determined as prescribed by such separate provision of law, shall be paid as directed by the court, and shall be paid from any source of funds available for that purpose.

12. Section 504.12 Amendments

These regulations may be amended by resolution of the Authority, provided that the Chair, upon written notice to the other Members of the Authority, may from time to time promulgate nonmaterial amendments of these regulations.

EXHIBIT C GENERAL CONDITIONS

Proprietary Information

Careful consideration should be given before confidential information is submitted to NYSERDA as part of your proposal. Review should include whether it is critical for evaluating a proposal, and whether general, non-confidential information, may be adequate for review purposes.

The NYS Freedom of Information Law, Public Officers Law, Article 6, provides for public access to information NYSERDA possesses. Public Officers Law, Section 87(2)(d) provides for exceptions to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which, if disclosed, would cause substantial injury to the competitive position of the subject enterprise." Information submitted to NYSERDA that the proposer wishes to have treated as proprietary, and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to exclude it from disclosure, including a written statement of the reasons why the information should be excluded. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501. However, NYSERDA cannot guarantee the confidentiality of any information submitted.

Omnibus Procurement Act of 1992

It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises, as bidders, subcontractors, and suppliers on its procurement Agreements.

Information on the availability of New York subcontractors and suppliers is available from:

Empire State Development
Division For Small Business
30 South Pearl Street
Albany, NY 12245

A directory of certified minority- and women-owned business enterprises is available from:

Empire State Development
Minority and Women's Business Development Division
30 South Pearl Street
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