

# Generating Waste: Problems with NYPA and the IDAs and How to Solve Them

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## **Executive Summary: Problems, Examples and Solutions**

New York State is spending billions of dollars on economic development programs without reaping significant public benefits. Too often the State is subsidizing sprawl, pollution, and poverty-level employment. An examination of the State's two largest economic development programs, the industrial development agencies and the New York Power Authority, reveals numerous problems – but also ready solutions that will save the taxpayers money and lead to real, sustainable growth.

**Problem: Many subsidized projects do not grow the economic pie, but merely re-slice it.**

Example: Of the thirteen projects aided by the Amherst IDA in 2010, only two exported goods or services beyond the state. The other 11 projects included two supermarkets, one car dealership, and three medical offices.

Solution: Explicitly require a certain level of job creation per subsidy, and evaluate projects not simply on how many jobs the company claims it will create or retain at the project, but on how many net jobs the project will add to the state. Projects such as retail stores, hotels, medical offices, and car dealerships may add jobs to one company, but only at the expense of other local companies. Focus subsidies on projects that export goods or

services beyond the state, and, ideally, the nation. Require that construction jobs created go to local, not out-of-state workers.

**Problem: Many subsidized projects subsidize poverty-level jobs that leave the workers dependent on public assistance.**

Example: The Niagara County IDA's current project list includes five hotel/motel projects. The median wage in Western New York for a housekeeper, such as a hotel chambermaid, is \$18,920.

Solution: Do not subsidize low-wage service sector jobs in retail and hospitality. Require all subsidized companies to pay a living wage: i.e. enough so that the worker will not require public assistance.

**Problem: Economic development programs do not help the workers who need them most: those who suffer from segregation, discrimination, and other disadvantages.**

Example: The State's IDA law does not include any provisions that require or incentivize companies to hire local workers or disadvantaged workers.

Solution: Require contractors to have certified apprenticeship and pre-apprenticeship programs offering pathways out of poverty.

**Problem: Economic development programs tend to reward sprawl, rather than reinvestment in existing buildings and infrastructure.**

Example: Of the Niagara County IDA's seventeen 2010 projects, only three are in the City of Niagara Falls, while the prosperous, fast-growing town of Wheatfield captures six, including two doctor's offices and one dentist

Solution: Create state-wide criteria that favor projects that re-use buildings, do not require new infrastructure, and promote reinvestment in urban cores.

**Problem: IDAs overlap, compete with one another, and give rise to expensive and inefficient multiple bureaucracies.**

Example: The Buffalo Niagara region has nine separate IDAs, including six in Erie County.

Solution: Merge IDAs so that there is only one per economic region, or, at most, one per county. Reduce the nine IDAs in Buffalo-Niagara to one or two.

**Problem: IDAs are funded with a percentage of the tax exemptions they offer, giving them the incentive to offer as many and as large exemptions as possible.**

Example: The Amherst IDA granted HSBC \$79 million in tax breaks to expand a data center, a subsidy worth \$6.6 million per job created.

Solution: Fund IDAs with a separate funding stream that is not contingent on the deals they make.

**Problem: Campaign donations by businesses seeking subsidies or contracts from IDAs distort the process.**

Example: The Harris Beach law firm has given over \$60,000 in campaign contributions to Erie County Executive Chris Collins and \$20,000 to the Erie County Republican Party during the Collins era. Collins successfully urged the Erie County IDA to hire new attorneys, and Harris Beach was chosen.

Solution: Place stronger limits on the ability of IDAs to give tax exemptions or professional contracts to businesses that have donated to the campaigns of IDA board members.

**Problem: IDA boards are dominated by business interests with a pro-subsidy bias.**

Example: The seven member board of the Amherst IDA includes five members with a clearly corporate orientation, one attorney, and one professor. No members represent workers.

Solution: State legislation should require that most members of an IDA be drawn from citizen groups, non-profits, academic institutions, elected bodies, and other representatives of the public interest.

**Problem: Many IDA and NYPA subsidies are wasted on businesses that do not deliver on their promises of jobs and other community benefits.**

Example: Between 2003 and 2005, 23 companies failed to meet their job obligations under NYPA Expansion Power program, but only six had their allocation reduced.



Solution: Add clawback provisions to all subsidy programs, allowing the government to terminate and reclaim subsidies when targets are not met.

**Problem: NYPA has violated its legal duty to devote more than one third of the power from the Niagara Plant to businesses within 30 miles of the Plant.**

Example: As of 2008, one fifth of the low cost power earmarked for local businesses had gone unused over the past four years and had instead been sold by NYPA for an estimated \$161 million.

Solution: Require NYPA to make up for all the lost subsidies with additional allocations to Western New York businesses.

**Problem: Under NYPA's leadership, Western New York sees more burdens than benefits from hosting one of the state's greatest assets: the Niagara Power plant.**

Example: Residential customers in Erie and Niagara Counties pay electric bills at rates 50% higher than the national average – a difference that adds up to some \$400 per year.

Solution: Require NYPA to devote more of its low-cost power to residential and business customers in Western New York.

**Problem: NYPA, which should be in the power business, is poorly suited to doing economic development and does so in isolation from other economic development program, in an often ad hoc and politicized manner.**

Example: In 2007, Alcoa reached a deal with the State for \$5.6 billion in low cost power (one quarter of market rate) over 30 years, in exchange for a promise to invest \$600 million in its Massena facility and not to eliminate more than 165 jobs from its work force of 1,065.

Solution: Begin process of moving economic development functions to Empire State Development, and prioritizing NYPA's primary mission of providing low-cost power for all New York residents and businesses.

**Problem: Project-specific subsidies like those offered by NYPA and the IDAs are highly inefficient and waste tax revenues that could be spent on traditional public goods such as infrastructure, health, and education – which have the additional benefit of creating more jobs.**

Example: New York's tax expenditures on business have risen to \$8.2 billion per year, even as the State is slashing spending on almost every other program.

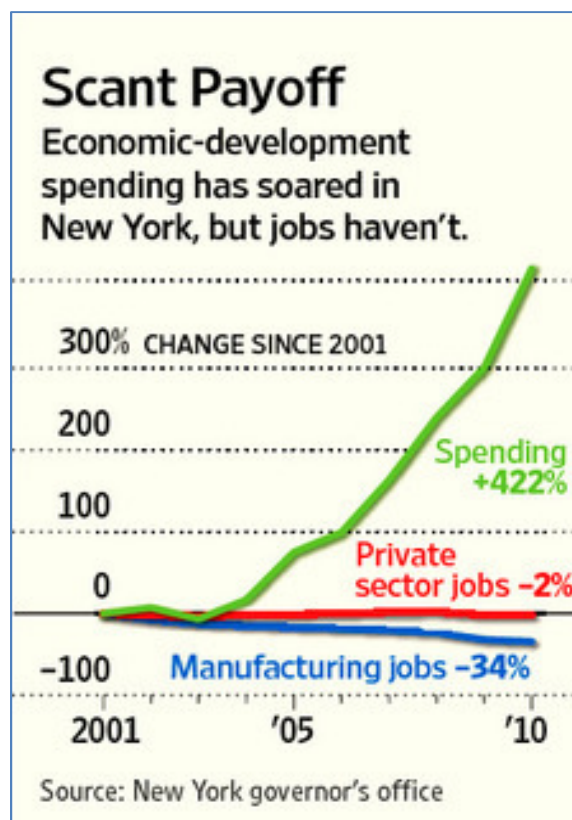
Solution: Reduce business subsidies and use the revenue regained on traditional public goods.

## Introduction: A Big Deal

This is an important moment for a fresh discussion of New York's economic development policies. Governor Cuomo has called for a new approach and has created ten regional economic development councils to craft strategic plans and criteria that will help guide roughly \$1 billion in State funding.<sup>i</sup> The councils also have a broad charge to make policy recommendations about economic development.

Meanwhile, unemployment and underemployment remain stubbornly high, and economic inequality continues to increase, as manufacturing jobs are replaced by low-wage service jobs. New York faces severe budgetary challenges and has slashed spending in most sectors of State government. Now, more than ever, New Yorkers need to take a close look at the State's spending on economic development and the results that it is yielding.

Over the last decades,



economic development has become an increasingly large and expensive part of what state and local governments do. Nationally, business incentive programs now cost state and local governments some \$70 billion dollar per year.<sup>ii</sup> In his budget message, Governor Cuomo noted that spending on economic development in New York State had more than tripled over the past decade, reaching about \$1.55 billion in the fiscal year ending in March 2011 – without achieving meaningful success in job creation.<sup>iii</sup>

“Economic development” is a vague term. But in New York as in other states, what economic development programs largely amount to is the awarding of tax breaks and other benefits to individual businesses. Governor Cuomo’s figure of \$1.55 billion was conservative. When all the State’s tax expenditures on business are combined, they now amount to some \$8.2 billion per year<sup>iv</sup> -- and that is just the tax breaks, not including all the overhead and staffing costs for all of the agencies that provide those tax breaks, and not including the low-cost power allocated by the New York Power Authority.

Unfortunately, New Yorkers are receiving very little return for their billions of dollars in investment. Instead, the State has created a sprawling, incoherent set of bureaucracies whose main function is to give tax breaks to some businesses at the expense of other businesses and taxpayers. This is done largely in the

name of job creation, but there is no evidence that the billions of dollars are buying many jobs, much less quality jobs that can grow and sustain a vibrant economy.

“Economic development” has become an upside down world in which, instead of government promoting public goods, government is captured by private businesses looking to increase their owners’ profits at the public expense. As the State’s resources are diverted into private concerns, it is forced to shortchange its traditional goals: building infrastructure, safeguarding natural resources, and promoting the health, education, quality of life, and equal opportunity of the people.

The way that New York runs its economic development programs only adds to the waste. As reported recently by the Alliance for a Greater New York (ALIGN), over 20 State agencies perform economic development functions and administer programs with an economic development mission. The Empire State Development Corporation, the State’s main development entity, has some 202 subsidiaries that operate as independent entities with a board, president, and staff, each associated with a large-scale development project. At the local level, a haphazard web of over 500 local development corporations, 115 Industrial Development Agencies, 82 Empire Zones Boards, 114 Business Improvement Districts, 49 Urban Renewal and Community

Development Agencies and 10 Regional ESDC offices engage in economic development activities.

In this report, PPG examines New York's broken system with examples from four of the largest economic development programs in the Buffalo Niagara region: the New York Power Authority (NYPA); and the industrial development agencies (IDAs) for Erie County, Niagara County, and the Town of Amherst. The goal of the report is not just to recommend changes to NYPA and the IDAs, but also to draw conclusions that are widely applicable to economic development efforts and that can help to guide the Regional Economic Development Councils as they craft their plans and criteria. This report is not meant to criticize the individuals operating NYPA and the IDAs, but rather to analyze the laws and policies under which they are working.

### **Industrial Development Agencies: Erie County, Niagara County, and the Town of Amherst**

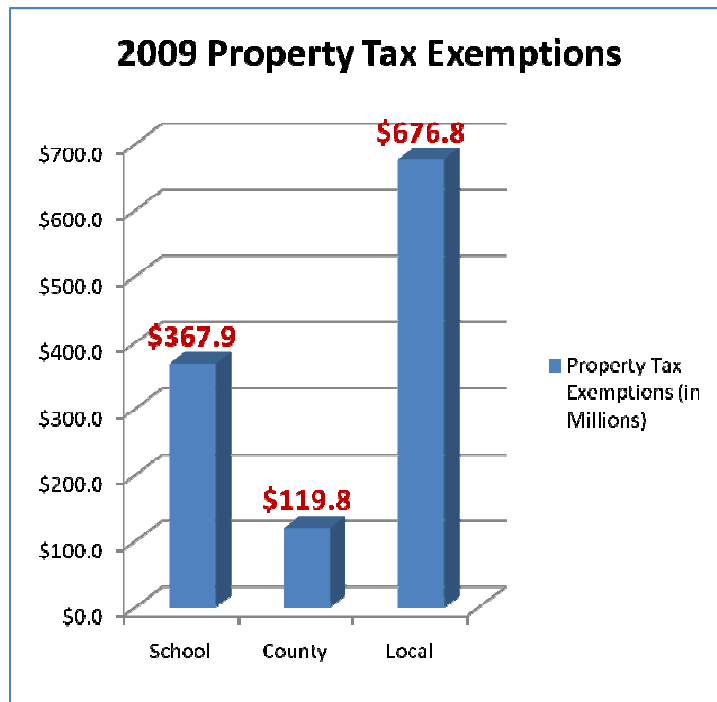
Industrial Development Agencies, or IDAs, are public benefit corporations created by State statute to advance the job opportunities, health, general prosperity and economic welfare of the people and to improve their recreation opportunities, prosperity, and standard of living. More specifically, they are to assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial,

manufacturing, commercial, and certain other types of facilities by providing tax exemptions (real property, sales, and mortgage recording) and bonding.<sup>v</sup>

New York now has 115 IDAs in 62 counties. IDAs have grown consistently more active over the decade, doing more projects each year. In 2003 IDAs assisted 3,294 projects with \$354 million in net tax exemptions; by 2009 they assisted 4,577 projects with \$496 million in net tax exemptions.<sup>vi</sup>

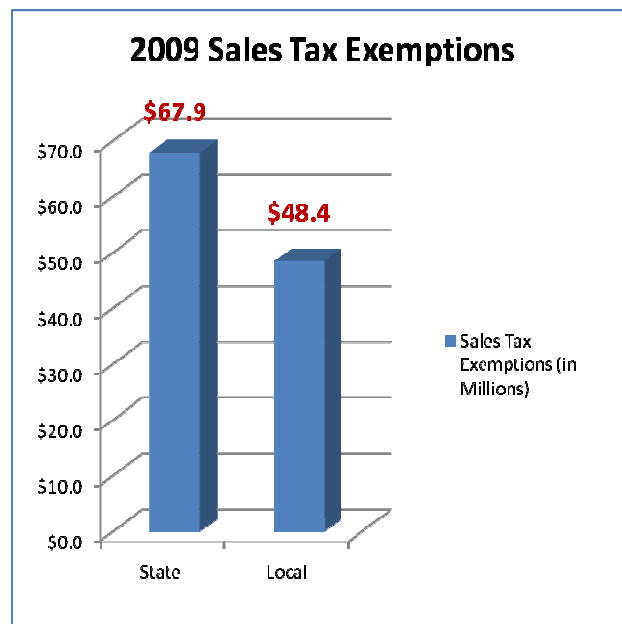
The most powerful tool IDAs have is the property tax exemption, which they achieve by taking title to the company's property. Since the IDA is exempt from property tax, it can then pass the savings on to the company. Typically, the IDA negotiates a payment in lieu of taxes (PILOT) from the company to partially offset the

exemption. Thus, in 2009, IDAs granted \$1.1 billion in exemptions but offset those with \$693 in PILOTs, for net exemptions totaling \$496 million.<sup>vii</sup>



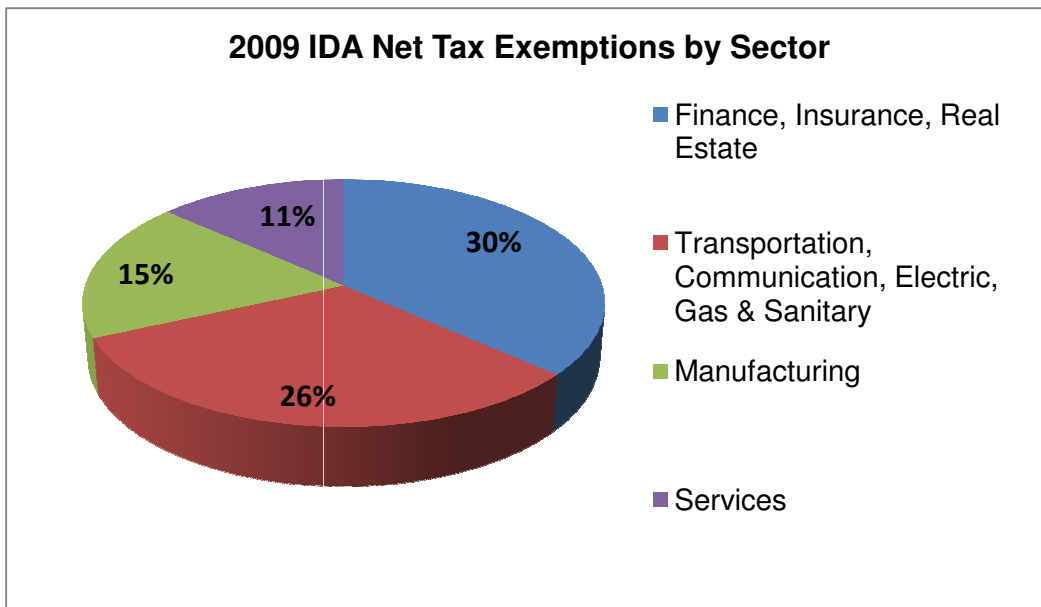


The tax exemptions affect the revenues of local governments and school districts, as well as New York State. For example, in 2009, of the sales tax exemptions, \$67.9 million were from State sales tax, and \$48.4 million were from local. Of the property tax exemptions, \$367.9 million were from school district taxes, \$119.8 were from county, and \$676.8 were from local.<sup>viii</sup>



The loss of tax revenue happens so quietly that citizens have no idea it is taking place. For example, the Niagara Frontier Transportation Authority recently announced that it might need to increase its fares, due to increased costs and loss of revenue from several sources, including a decrease in the Erie County money it receives from the mortgage recording tax. Few if any citizens would know that one reason for inadequate revenue from the mortgage recording tax is that the Erie County's six IDAs have granted so many exemptions from it.

Despite their name, Industrial Development Agencies are not at all limited to industrial projects. In fact, in 2009, finance, insurance, and real estate projects captured almost 30% of net tax exemptions. Transportation, communication, electric, gas, and sanitary services projects received 26% of net exemptions. Manufacturing received some 15%, and services received some 11%.



Another popular misconception about IDAs is that they use their incentives to lure businesses from out of state to the region. Of the 71 tax exemption deals that the IDAs of Niagara County, Erie County, and the Town of Amherst did in 2010, only one appears to involve a company coming from out of state (Triad Recycling). All the other deals appear to be expansions or relocations by companies that were already in the region.

Perhaps the most important thing to understand about IDAs is how broad and loose their mandate is. The IDA statute tells them to assist “projects,” and it places almost no limits on which projects they should assist. IDA projects are not required to produce or retain jobs or to produce any specified public benefits or avoid any specified public harms. The statute does require IDAs to establish a uniform tax exemption policy, and it tells them in adopting such a policy to “consider” such issues as “the extent to which a project will create or retain permanent, private sector jobs,” and “the effect of the proposed project upon the environment,” but it mandates virtually no criteria or controls.<sup>ix</sup>

### **A Bigger Pie, or Different Slices?**

The first goal of New York’s economic development policy should be to create more quality jobs. To create more jobs, it is necessary to increase the size of the economic pie, rather than merely re-slicing it among various businesses. Government intervention that simply favors one competitor over another does not produce more jobs; it just shifts them from one company to another. In doing so, it wastes government resources and distorts the market, since a company is rewarded for its ability to get government subsidies, not for its excellence, efficiency, and benefit to the public.

To see if a project will increase the pie or merely re-slice it, one needs to look at the company's competitors and its customers. If the company competes against companies from other countries, then government assistance may grow our national economy by favoring our company over another nation's. If the company competes against companies from other states, then government intervention might grow New York's economy at the expense of other states (from a national perspective, this would be wasteful and inefficient, but it might help

**Problem: Many subsidized projects do not grow the economic pie, but merely re-slice it.**

*Solution: Explicitly require a certain level of job creation per subsidy, and evaluate projects not simply on how many jobs the company claims it will create or retain at the project, but on how many net jobs the project will add to the state. Projects such as retail stores, hotels, medical offices, and car dealerships may add jobs to one company, but only at the expense of other local companies. Focus subsidies on projects that export goods or services beyond the state, and, ideally, the nation. Require that construction jobs created go to local, not out-of-state workers.*

New York). A similar logic prevails in looking at customers. If the company's customers are all local, then government intervention will tend to be wasteful, but if it exports goods or services then intervention may be more productive.

Unfortunately, the law governing IDAs does not require a rigorous look at a company's competitors and customers to determine if the project is growing the pie or merely re-slicing it.

Thus, of the 13 tax break deals that the Amherst IDA did in 2010, only two involved businesses that exported goods or services beyond the state.<sup>x</sup> The Niagara County and Erie County IDA assisted more businesses in manufacturing and other export-oriented work, but the Niagara County IDA gave exemptions for a dentistry in Wheatfield and medical offices in Wheatfield, Cambria, and Lockport; and the Erie County IDA assisted projects such as a Dollar General store, the expansion of a restaurant (Chef's), and an urgent care facility.<sup>xi</sup>

Another key question is whether the company is locally owned or headquartered. If the company's owners are local, then more of their profits will stay in the local economy as they are spent, invested, and donated to local causes. If the company is privately held by owners in another state, or if it is publicly held by shareholders from around the world, then the profits will produce less local benefit and more benefit in other states and nations. Even if the company is publicly held, it matters where it is headquartered, because companies tend to reward their home regions with more charitable contributions and civic involvement, and, when they make decisions about cutting costs or trimming back operations, they tend to cut the branches first and the home last.

HSBC Bank, headquartered in Europe, is a good example of lavish tax breaks with little local benefit. In 2006, the Amherst

IDA granted HSBC \$79 million in tax breaks to expand a data center, a subsidy worth \$6.6 million per job created.<sup>xii</sup> Now HSBC is dramatically reducing its Buffalo operations, selling its 175 upstate retail bank branches, and closing its data center, which will be purchased by M&T. In addition to assuming HSBC's tax breaks, M&T is seeking tax breaks of roughly \$8.5 million over 10 years for new technology and equipment purchases for the data center.<sup>xiii</sup>

To their credit, the six IDAs of Erie County have adopted a Countywide IDA policy that attempts to address some of these issues. For example, it makes retail, medical, and for-profit educational projects generally ineligible. Unfortunately, the exceptions to the policy are so broad and the enforceability of it so lacking that Amherst's 13 projects in 2010 included four retail projects, three medical projects, and one for-profit educational project.

The Countywide IDA policy also attempts to address policy priorities by creating three tiers of tax exemptions, with projects qualifying for larger exemptions if they score better on a list of criteria that include employment, out-of-region sales, in-region purchases, capital investment, cluster/regionally strategic industry, compliance with the Framework for Regional Growth, re-use of a brownfield, local ownership, green technology, and professional development/lifetime learning programs. These

criteria are a positive step, but they only determine how big an exemption the company receives, not whether it receives one, and if an IDA violates the policy, there is no mechanism for redress.

In assessing whether a benefit package is helping grow the economy, perhaps the most difficult question is whether the government aid is necessary, or whether the company would have done the project anyway. Erie County Executive Chris Collins expressed this point succinctly when he (unsuccessfully) objected to an ECIDA award of \$74,000 in sales tax exemptions for Martin's Fantasy Island amusement park to build two new rides: "They're going to put these rides in regardless. What company wouldn't like a freebie, and this is a freebie."<sup>xiv</sup>

The former CEO of Alcoa, Paul O'Neill, makes a similar point:

I never made an investment decision based on the Tax Code . . . [I]f you are giving money away I will take it. If you want to give me inducements for something I am going to do anyway, I will take it. But good business people do not do things because of inducements, they do it because they can see that they are going to be able to earn the cost of capital out of their own intelligence and organization of resources.<sup>xv</sup>

One reason companies do not make their decisions based on tax breaks is that the cost of state and local taxes is only 0.8% of the typical company's cost of doing business – far, far less than labor, materials, energy, transportation, land/office space, etc.<sup>xvi</sup> Thus, a tax break is generally not going to be a determinative factor; instead, it is going to be “gravy.”

The point made by Collins and O'Neill applies to almost all IDA deals. Although the IDAs justify them by pointing to additional tax revenue the developments will eventually generate, their argument assumes that the company would not do the development but for the incentives. This “but for” test is not one that the IDAs actually use in evaluating projects, so they have no way of knowing whether a project passes it, and the evidence suggests that few projects do.<sup>xvii</sup>

In fairness to the IDAs, a true “but for” test would be very hard to implement. To know whether a company would do a project without government assistance would require such a detailed and intimate knowledge of the company's position and strategy, it is hard to imagine a government agency succeeding in it. Hence, this “but for” problem is a fundamental flaw of business incentives in general, rather than one specific to New York's programs.



But even if a company can prove that it would not have expanded but for government assistance, that fact alone does not justify the assistance. If the project is not expanding the state's economic pie, then all the assistance is doing is favoring one local competitor over another. In other words, it might be true that Northtown Automotive would not have expanded its Lexus dealership in 2010 without help from the Amherst IDA. But an expanded Lexus dealership in Amherst did nothing for the local economy. It just gave one car dealer an unfair advantage over its local rivals in competing for a finite pool of customers.



Finally, if a project is to truly grow the local economic pie, it is important that the jobs created go to local businesses and workers. In the construction phase of subsidized projects, it is surprisingly common for the developer or business to hire out-of-state contractors that bring in out-of-state workers – as in the case of the Holiday Inn Express in Niagara Falls, discussed more fully below.

Because of these weaknesses in economic development policy, all of the statistics given in annual reports, statements by government officials and press stories about the jobs created or retained by various government-assisted projects are nearly meaningless. For example, the Amherst IDA reports that the Buffalo Rheumatology project will create nine new jobs and retain eight existing ones. But every job Buffalo Rheumatology creates or retains is a job that would otherwise exist at another local rheumatology office. Helping Buffalo Rheumatology move from Orchard Park into a larger office in Amherst does not create more customers for rheumatology or enable them to export their services to another country. Thus, the assistance from the Amherst IDA did not really create or retain any jobs.



***Buffalo Rheumatology received assistance to move from its Orchard Park location (top) to Sheridan Drive in Amherst (bottom), the former site of Fanny's Restaurant***

## Job Quality

Another key component of economic development policy should be job quality. A quality job is one with family-supporting pay and benefits and a healthy and respectful work environment. Subsidized projects should create quality jobs during their construction phase and in their permanent operations. Jobs that are unsafe or pay poverty level wages do not promote the public good; rather, they create more public costs.

Job quality is especially relevant in western New York, where unemployment is currently well below the national average (8.4% in Buffalo Niagara in 2010, compared to 9.63% in the nation), but where the shift from good-paying manufacturing jobs to low-wage service jobs has been particularly dramatic and destructive.<sup>xviii</sup>

Roughly one third of the jobs in western New York do not pay enough to keep a family safely out of poverty. Some 125,000 workers are in occupations for which the median wage is less than \$20,000 per year – including salespeople, cashiers, security

**Problem: Many subsidized projects subsidize poverty-level jobs that leave the workers dependent on public assistance.**

*Solution: Do not subsidize low-wage service sector jobs in retail and hospitality. Require all subsidized companies to pay a living wage: i.e. enough so that the worker will not require public assistance.*

guards, and child care workers. Another 40,000 workers are in jobs where the median wage falls between \$20,000 and \$23,000 – including janitors, home health aides, pre-school teachers, and teachers assistants. Over 216,000 workers (34.1% of the workforce) are working in jobs with a median wage of under \$26,000 per year.<sup>xix</sup>

Low paying jobs is a key reason that the 2009 median income in Buffalo-Niagara (\$45,811) fell so far below the national average (\$50,221), despite the fact that the local unemployment and poverty rates were lower than the national average.<sup>xx</sup> In other words, in Buffalo-Niagara, work that does not pay enough is an even bigger problem than unemployment. It is not just that we lack jobs, but also that we lack quality jobs.

The problem is not that the local population is under-educated for higher paying jobs. In Buffalo-Niagara, only 11.3% lack a high school diploma, compared to 17% nationally. As a state, too, we tend to be over-qualified, not under-qualified, for the jobs available. Only one-third of jobs in New York State require more than a high school degree, whereas over half of New Yorkers have at least some college education.<sup>xxi</sup> The problem is simply that too many jobs do not pay a living wage.

Unfortunately, most subsidy programs do not require living wages or even distinguish between good jobs and poverty jobs. The Niagara County IDA's current project list includes five hotel deals. In addition to not growing the local economy, hotels tend

to pay poverty wages. The median wage in WNY for a housekeeper, for example, is \$18,920.<sup>xxii</sup> A housekeeper earning \$18,920 per year is likely to need substantial government assistance such as Food Stamps, public housing, child care assistance, Home Energy Assistance, Medicaid, etc.

An extreme example of bad job quality in the construction phase is the Holiday Inn Express that the Niagara County IDA

subsidized on Niagara Falls Boulevard. The owner hired an out of state contractor, DEC Management Inc. of Athens, Ga., which brought in out-of-state, non-union workers to do the job. OSHA cited the company for inadequate training and inadequate fall protection in August 2007. Two months later, a worker died in a fall.<sup>xxiii</sup>



The idea that the government should attach job quality standards to its business assistance programs is not new. Forty three of the fifty states have job quality standards in their economic development programs, and over 100 cities and

counties have living wage laws, many of which apply to subsidies as well as government contracts.<sup>xxiv</sup> New York should make sure that all of its development programs include requirements that any job subsidized must pay a living wage and that companies that violate worker safety laws lose assistance. Currently, neither the IDA statute nor the Erie County Countywide IDA policy makes any provision for job quality.

### **Jobs for Disadvantaged Workers**

In addition to providing quality jobs, government-assisted projects should provide jobs for workers disadvantaged by segregation, discrimination, and other factors outside of their control.

Buffalo-Niagara is plagued by racial and geographic inequality and an intense urban/suburban divide. While the 2009 poverty rate in the metropolitan area (14%) is below that of the state (14.2%) and the nation (14.3%), the poverty rate in the City of Buffalo is 28.8%, one of the nation's highest. Currently, of the 123,150 people living in poverty in Erie County, 75,229 live in the City of Buffalo.<sup>xxv</sup>

**Problem: Economic development programs do not help the workers who need them most: those who suffer from segregation, discrimination, and other disadvantages.**

*Solution: Require contractors to have certified apprenticeship and pre-apprenticeship programs offering pathways out of poverty.*

Racially, Buffalo is the eighth most segregated metro area in the nation.<sup>xxvi</sup> Eighty-six percent of the region's African-Americans are concentrated in the cities of Buffalo and Niagara Falls.<sup>xxvii</sup> In 2005, the poverty rate in the metro area for white people was 8.7%; for African-Americans it was 32.3% and for Hispanics it was 29.8%.<sup>xxviii</sup> While only 1.2% of the metro area's white residents live in very high poverty neighborhoods, 25.9% of Hispanic residents and 21.1% of African-American residents live in very high poverty neighborhoods. For whites, this level of poverty concentration is the 23<sup>rd</sup> worst in the nation; for African Americans, it is the 7<sup>th</sup> worst; and for Hispanics, it is the 4<sup>th</sup> worst.<sup>xxix</sup>

New York's programs, however, do not tend to include requirements or incentives for companies to hire urban or disadvantaged workers; instead, they tend to further isolate those workers by subsidizing development in suburbs and exurbs, far from disadvantaged areas and inaccessible to public transportation (see the section on sprawl below).

One solution is to require that companies receiving incentives hire local workers to do the construction, and that they use contractors with certified apprenticeship and pre-apprenticeship programs that offer young workers pathways out of poverty.

For a more dramatic change, imagine if, instead of awarding tax breaks to businesses who might or might not hire more workers

as a result, and who, if they hire more workers, might simply be taking them from their competitors, the government simply hired disadvantaged workers to work on public projects. PPG recently calculated that it would cost about \$8.3 million to run a program, modeled after a successful program in Philadelphia, to hire disadvantaged workers to clean and green 4,000 of the vacant lots that blight Buffalo and Niagara Falls for ten years. Compare that figure to the \$79 million in tax breaks granted to HSBC Bank for a data center in Amherst creating 12 new jobs.

### **Sprawl Without Growth**

One of the biggest assets in western New York is the historic buildings, urban fabric, and infrastructure of the cities of Buffalo and Niagara Falls. One of the biggest regional problems is the way we have abandoned those cities for the suburbs and exurbs.

The city of Buffalo, which had 580,132 people in 1950, had dropped to 261,310 people by 2010. To a great extent, this loss reflected a move to the suburbs and exurbs. The population of Erie County outside of Buffalo exploded from

**Problem: Economic development programs tend to reward sprawl, rather than reinvestment in existing buildings and infrastructure.**

*Solution: Create state-wide criteria that favor projects that re-use buildings, do not require new infrastructure, and promote reinvestment in urban cores.*



319,106 in 1950 to 657,602 in 1980, and, after a dip in the 1980s, has recovered to its present peak of 657,730.

Similarly, the city of Niagara Falls fell from 102,394 in 1960 to 55,593 in 2000, a 45.7% reduction, and continues to lose population today, with a 2008 population estimated at 51,345. Meanwhile, Niagara County's population peaked in 1960 at 242,269 before falling (mostly in the 1960s and 1970s) to its current level of 214,557.<sup>xxx</sup>

From a regional perspective, the pattern is one of sprawl without growth. From 1980 to 2006, the region's population fell by 5.8%, but the urbanized area grew 38%.<sup>xxxi</sup> From 1984 to 1999, the average miles driven each day went from 10 to 15.<sup>xxxii</sup>

Buffalo is suffering from a major crisis of housing abandonment, a vicious spiral that is perhaps the city's biggest problem. US Census data show a dramatic rise in housing vacancies within Buffalo. From 1990 to 2000, for cities of at least 250,000, Buffalo went from the fifty-



*Vacant lot owned by Ellicott Development Co.*

fifth highest vacancy rate in the nation (10.2%) to third in the nation (15.7%). The number of undeliverable addresses measured by the Postal Service in Buffalo rose from 15,651 to 20,692 from the fourth quarter of 2005 to the third quarter of 2010. As of 2000, the City estimated 10,170 vacant lots and 8,684 abandoned structures. By April 2010, 15,897 lots were listed as vacant in the City's data base.<sup>xxxiii</sup>

As neighborhoods lose population – and especially their upper and middle-income residents – banks, grocery stores, services, and even religious institutions leave with them. As disinvestment takes hold, the neighborhoods get pushed out of the mainstream economy and into informal economies, where much of the economic activity is unregulated, illegal, or predatory (rent-to-own stores, check cashing outlets, refund anticipation loans, and subprime home equity loans).<sup>xxxiv</sup> Faced with an overwhelming concentration of poverty, the public school system cannot possibly succeed. Children come to school carrying enormous burdens from their impoverished circumstances – burdens which even the best schools cannot completely overcome. Without neighborhood stability, regional economic health is not possible.

Unfortunately, New York's economic development policies have tended to incentivize sprawl rather than reinvestment in existing neighborhoods. As the 2007 study "Sprawling by the Lake" demonstrated, far from helping to revitalize the city of Buffalo,

the IDAs are subsidizing sprawl. In 2005, the city of Buffalo, with 30% of the county's population, contained only 17% of the IDA tax-exempted properties. In 2005 Amherst was home to 178 property tax exemptions totaling almost \$393 million; Buffalo, by contrast, had 113 exemptions totaling just under \$248 million.<sup>xxxv</sup>

Similarly, a review of the Niagara County IDA's 2010 projects shows that of the 17 projects, only three are in the City of Niagara Falls, while the wealthy, fast-growing town of Wheatfield captures six, including two doctor's offices and one dentist. It is simply absurd for the hard-pressed residents of the City of Niagara Falls – many of them lacking dental, and even health insurance – to be financing tax exemptions for doctors and dentists in Wheatfield.

Erie County's County-Wide IDA Policy attempts to incentivize reinvestment by creating categories for Adaptive Re-Use and Neighborhood Enhancement. Unfortunately, these are crafted loosely and made exceptions to the normal eligibility rules, rather than as added points to already eligible projects. As a result, they may be doing more harm than good. Of the 13 Amherst IDA projects in 2010, eight involved businesses (medical, retail, education) that do not normally qualify under the countywide policy, but that were approved based on the Adaptive Re-Use and/or Neighborhood Enhancement exceptions,

including a speculative office/retail project on Main St. in village of Williamsville – one of the most prosperous, upscale retail strips in the region. A recent project funded by the Erie County IDA – a Dollar General store in South Buffalo – had somewhat more justification because it is located in a challenged neighborhood with a weak market for re-use, but still raised questions because it is a retail store with low wage jobs – a re-slicing of the economic pie, not a growing of it.<sup>xxxvi</sup>

### **Sustainable Development**

The story of sprawl points to a broader issue. To be strong and durable, an economy must be sustainable. And to be a worthwhile investment, a project must not cost society more in environmental burdens than it produces in jobs and tax revenues.

Unfortunately, the State heavily subsidizes some of the biggest polluters in the region. AES, a multinational company which reported net income of \$910 million in the first half of 2011, has demanded and won extensive tax breaks from the Niagara County IDA to keep open its coal-fired power plant in Somerset. As one local tax payer commented, “My school taxes went up 23% because of that.”<sup>xxxvii</sup>

NRG has received large tax exemptions from the Erie County IDA (as well as Empire Zone tax breaks) for its coal plant in Tonawanda, which is by far the largest source of pollution in Erie

County, releasing some 2,642,883 pounds of toxins per year.<sup>xxxviii</sup> On a more sustainable note, the Erie County IDA also provided \$115 million in public bonding for pollution control at the plant – but it is dispiriting that the State Attorney General had to win a consent order with NRG to get that pollution control.<sup>xxxix</sup>

Many states have adopted policies under which projects are rewarded for re-using existing buildings and infrastructure and for locating near public transit, for using green building and operational techniques and for avoiding environmental harm. New York's affordable housing programs already have extensive green criteria that the developer must meet to get tax breaks, but New York's economic development programs do not.

## **IDA Governance**

### **Overlap and Intra-Regional Competition**

Many economic development agencies and entities in New York have overlapping jurisdiction. A company seeking government assistance must commonly apply to multiple sources with different rules and priorities and different deadlines. A citizen trying to understand a subsidy package must master a bewildering array of agencies and programs.

Even within a single program, there is the problem of overlap and intramural competition. A classic example is the nine separate IDAs serving Buffalo-Niagara, each with its own board and programs. What makes the IDA system truly pernicious is the way that it severs the link between taxation and representation. A town can form its own IDA, appointed by and accountable only to that town board, with the power to give exemptions from taxes owed not only to that town, but also to the school district, county, and state.

**Problem: IDAs overlap, compete with one another, and give rise to expensive and inefficient multiple bureaucracies.**

*Solution: Merge IDAs so that there is only one per economic region, or, at most, one per county. Reduce the nine IDAs in Buffalo-Niagara to one or two.*

It would be one thing for the Town of Clarence to subsidize a Dash's supermarket with its own money; it is quite another thing for it to subsidize the market with money from the school district, county, and state. Similarly, residents of Buffalo help foot the bill when Clarence subsidizes the "New Buffalo Shirt Factory," formerly located in Buffalo, now located in Clarence. To add insult to injury, the Clarence IDA took out full page ads in the Buffalo News touting their success in subsidizing these two projects. Who paid for those ads? Ultimately, all the taxpayers of the state and county.

To prevent intra-state pirating, IDAs may not assist intra-state movement of industrial or manufacturing plants unless it is “reasonably necessary” to keep the company from moving out of state or to preserve the competitive position of the company in its industry. But pirating remains common. A 2006 state comptroller audit of six IDAs found that of their 108 projects, 21 involved moves within the state. While all the companies claimed that the moves were “reasonably necessary” under state law, none of the IDAs had documented or verified the claims.<sup>xi</sup>

The Amherst IDA has aggressively subsidized “spec” office complexes that draw tenants from Buffalo and other suburbs. In one instance, a court found the Amherst IDA guilty of pirating office tenants from downtown Buffalo.<sup>xli</sup> But the practices continue. Several years ago, the Amherst IDA granted Uniland \$1.46 million in tax breaks to build an office building, even though Uniland had not disclosed any of its prospective tenants.<sup>xlii</sup> This past year, the Amherst IDA gave exemptions for an office/retail complex on Main Street in Williamsville with no identified tenants.

Ideally, New York should have only one IDA for each economic region. Thus, Buffalo-Niagara, which shares a single economy, would share a single IDA, instead of nine. At a minimum, the State should forbid cities or towns to have their own IDAs when a county IDA is in existence.

## **Overhead**

The IDAs are not cheap to operate. The 2010 expenditures for Erie County IDA were \$6.6 million, for Niagara County IDA \$1.2 million, and for Amherst IDA \$0.7 million.<sup>xliii</sup> The top salary at the Amherst IDA is \$169,000 – almost exactly the salary of the Governor of New York (by contrast, the Mayor of Buffalo makes about \$105,000 per year).<sup>xliiv</sup> It is sometimes said that the IDAs are not funded with taxpayer dollars, but that is not really true. IDAs get their funding as a percentage cut of the deals they do with companies. In other words, part of the tax savings they give to companies is returned to them as a fee. As demonstrated above, the tax savings given to companies are not free to the area's taxpayers. In many cases, every dollar of incentive offered is a dollar lost to tax revenues, which must be made up for by all the other taxpayers in the area.

## **Incentive Structure**

The fact that IDAs get their revenues as a percent of the exemptions they grant creates a large conflict of interest. For IDAs, the natural incentive is to grant as many tax exemption, and as large tax exemptions, as possible. This generates the fees that pay the IDAs' salaries, rent, professional services, and marketing expenses. The more deals an IDA does, the more "successful" it is, and the more highly its staff can be compensated.



This incentive structure is misaligned, to say the least. The IDAs get to play with free money. There is no negative consequence to the IDA board and staff from giving away local and state tax revenue. The interests of the IDA and the business seeking the tax break are nearly completely aligned; both of them want to do the deal and to have the deal be as large as possible. There is no one in the loop to guard the public's interest in not wasting money.

**Problem: IDAs are funded with a percentage of the tax exemptions they offer, giving them the incentive to offer as many and as large exemptions as possible.**

*Solution: Fund IDAs with a separate funding stream that is not contingent on the deals they make.*

### **Campaign Donors**

Given that IDAs share a financial interest with the companies they serve, it is natural for them to become cozy with them. Unfortunately, this problem is compounded by the fact that companies are increasingly able to buy favorable treatment from the elected officials who should be standing guard over the economic development systems.

In 2010, Verizon was offered a suite of NYPA, IDA, and other subsidies worth \$614 million for 200 jobs, or \$3.1 million per job, to build a data center in Somerset. In the end, Verizon decided it did not need the new data center and walked away.<sup>xlv</sup> But how did Verizon obtain this lavish package in the first place? Certainly, it didn't hurt that Verizon donated more than \$1.2

million in campaign contributions over the last five years and spent \$9.3 million in lobbying state and local governments in New York from 2006 to 2009, employing 14 in-house lobbyists and outside lobbying firms, too.<sup>xlvi</sup>

In addition to companies seeking tax breaks, law firms and other businesses seeking lucrative IDA work are often large campaign donors. The Harris Beach law firm has given over \$60,000 in campaign contributions to Erie County Executive Chris Collins and \$20,000 to the Erie County Republican Party during the Collins era. It is not surprising, then, that Collins appeared “very intent” on hiring Harris Beach to replace the law firm that had represented the IDA for the previous 18 years. Harris Beach has made at least \$740,000 and perhaps as much as \$2 million from its IDA work since January 2009.<sup>xlvii</sup>

**Problem: Campaign donations by businesses seeking subsidies or contracts from IDAs distort the process.**

*Solution: Place stronger limits on the ability of IDAs to give tax exemptions or professional contracts to businesses that have donated to the campaigns of IDA board members.*

## Board Membership

The seven member board of the Amherst IDA includes five members with a clearly corporate orientation, one attorney, and one professor. No members represent workers. The boards of Erie County IDA and Niagara County IDA are somewhat more balanced, but still clearly tilted toward corporate interests. When non-corporate individuals fill places on boards such as this, they can often feel that they are there for window dressing, or feel co-opted. As one local IDA board member candidly confessed, his board is “very in with the builders,” “there’s a lot going on that I’m not privy to,” and “when you’re there, you get co-opted a little bit.”<sup>xlviii</sup>

**Problem: IDA boards are dominated by business interests with a pro-subsidy bias.**

*Solution: State legislation should require that most members of an IDA be drawn from citizen groups, non-profits, academic institutions, elected bodies, and other representatives of the public interest.*

In some cases New York’s statutes prescribe the membership of individual IDA boards. For example, the Erie County IDA’s authorizing statute requires that the board include various public officials, the president of the Buffalo AFL-CIO, the president of the NAACP, the board chair of the chamber of commerce, five members representing the business, labor, and minority communities appointed jointly by the county executive and the legislative chair, and others.<sup>xlix</sup> Where the State has not made

specific arrangements, however, it leaves it up to the local municipality. While the statute suggests that school boards and organized labor be represented, it does not require it.<sup>i</sup> One simple IDA reform would be to require all IDA boards to have more balanced representation, including school boards, labor interests, environmental, and public interest groups, and ensuring that private business interests do not form the majority.

### **Accountability**

Around the country, there has been a growing move to require results in return for subsidies, and to ask for money back where jobs are not created. Over 20 states and dozens of cities use clawbacks that require full or partial reimbursement when companies fail to fulfill their promises.<sup>ii</sup> Minnesota requires all state and local subsidy agreements to include clawbacks and bans noncompliant companies from receiving further subsidies for five years or until they have repaid their debt.<sup>iii</sup> Virginia, ranked by Forbes magazine as the top state for business for several years in a row, has clawbacks in its Major Business Facility Jobs Tax Credit.<sup>liii</sup>

**Problem: Many IDA and NYPA subsidies are wasted on businesses that do not deliver on their promises of jobs and other community benefits.**

*Solution: Add clawback provisions to all subsidy programs, allowing the government to terminate and reclaim subsidies when targets are not met.*

Connecticut requires repayment of the full value of a subsidy if the company relocates outside the state within ten years or during the term of the agreement, whichever is longer.<sup>liv</sup>

Clawbacks have appeal for both Republicans and Democrats. In Ohio, for example, Republican governor John Kasich signed nearly a dozen “clawback” orders in spring 2011, demanding that companies that had not met their job goals return some of their subsidy money.<sup>lv</sup>

New York’s economic development programs have very few clawback provisions. The IDA statute lacks them entirely. A company may keep all of its tax exemptions even if it utterly fails to deliver on its promises of jobs or other benefits to the region. Erie County’s Countywide IDA Policy includes a clawback for cases of intentional, material falsehood in the company’s application, but it also states that “the failure of an applicant to meet any specific employment numbers set forth in the application . . . shall not be deemed to be false or misleading in any material aspect.”<sup>lvi</sup> In other words, the company is not allowed to lie, except about how many jobs it will create or retain! That is truly a clawback with no claws.

A related problem is that IDAs and local governments are often left with no effective recourse when projects fail and aid recipients fail to make their PILOTs. For example, the Niagara Falls School Board recently wrote off \$3.4 million in outstanding

PILOTS, including \$1.2 million owed by Niagara Splash Park, \$1.2 million from Falls Street Faire, \$393,000 from Aqua Falls (the failed aquarium project by the Rainbow Bridge), and \$309,000 from Rainbow Square.<sup>lvii</sup>

In addition to clawbacks, more detailed and public reporting will help to improve the accountability of both development agencies and the companies they assist. The Public Authorities Reform Act made substantial improvements in the New York's development reporting, but much more can be done. Illinois, for example, offers a searchable database with reports from subsidy recipients on jobs created or retained and salaries.<sup>lviii</sup>

### **New York Power Authority**

NYPA is the largest publicly owned utility in the nation, providing New York with more than one quarter of its electricity and operating more than 1,400 miles of transmission lines. Run by a board appointed by governor, NYPA owns 17 power plants that supply about one fourth of the state's electricity needs. NYPA is an unusual government entity in that it tends to run a "profit." In 2010 NYPA reported net income of \$181 million.<sup>lix</sup>

NYPA operates a variety of economic development programs, including Economic Development Power,<sup>lx</sup> Power for Jobs,<sup>lxi</sup> Preservation Power, Expansion Power, Industrial Incentive

Awards,<sup>lxii</sup> Replacement Power, and Energy Cost Savings Benefit Awards.<sup>lxiii</sup> Most of these programs award low-cost power to individual companies in exchange for promises of job retention or creation. For example, Power for Jobs serves 405 employers with 286.9 MW of low cost power. Economic Development Power offers 153 MW of power to 46 companies around the state, with a balance of 106.7 MW unallocated.<sup>lxiv</sup> Preservation Power serves mainly one business, Alcoa, which receives 478 MW of low cost power from the Massena Power Plant. The size of these allocations makes NYPA the biggest economic development agency in the state. Alcoa alone receives a subsidy worth \$5.6 billion over its 30 year life.<sup>lxv</sup>

NYPA, which employs roughly 2600 people, has long been noted for its high salaries and overhead and questionable expenditures. In 2009-2010, the State Comptroller found, NYPA spent \$160,000 on 21 holiday parties and picnics and \$85,000 on gifts for employee service and recognition, plus another \$57,000 on service award and recognition ceremony expenses.<sup>lxvi</sup> In 2005, the Buffalo News found a "gold-plated bureaucracy at NYPA, with 1,600 employees earning an average of more than \$82,000 per year. NYPA had issued its staff 245 cell phones, 274 Blackberries, 303 laptops, and 720 credit cards. NYPA's 15 lawyers earned an average of \$133,000, but NYPA also spent \$17,200 per business day on outside lawyers.<sup>lxvii</sup>

In 2007, the News reported that NYPA's relicensing negotiators and their guests had violated various policies on expenditure as they and their guests spent over \$5,300 of public money on meals at fancy Buffalo restaurants such as the Left Bank and Oliver's and rented SUVs instead of small and mid-sized cars.<sup>lxviii</sup> For years, NYPA paid most of its employees bonuses each year, spending some \$3 million per year on them, but this was discontinued in 2009 after NYPA proposed a rate hike and faced a storm of criticism.<sup>lxix</sup>

### **Niagara Power Plant**

NYPA plays a special role in western New York because of the Niagara Power Plant. The Niagara Plant opened in 1961, replacing two private utilities. The Niagara Plant provides 56% of NYPA's electricity and does so very cheaply, because hydropower costs about 0.5 cents per kilowatt to generate, compared to 2.3 cents for coal and 9.3 cents for natural gas.

Federal and state laws include a number of requirements as to how NYPA allocates the power from the Niagara Plant. Roughly one-third must go to companies within 30 miles of the Plant as Replacement and Expansion Power. At least 50% is reserved "for the benefit of the people as consumers, particularly domestic and rural consumers" at "the lowest rate reasonably possible and in such manner as to encourage the widest possible use," with preference given to "public bodies and non-profit



cooperatives.”<sup>lxx</sup> Currently, NYPA meets this by selling about 33% of the power to non-profit municipal utilities and rural cooperative utilities, and about 17% to three for-profit utilities: National Grid, NYSEG, and Rochester Gas and Electric. In addition, federal law requires that a “reasonable portion” of preference power, not to exceed 20%, must be available to neighboring states.<sup>lxxi</sup> NYPA sells about 10% to nonprofit utilities in neighboring states. After fulfilling the statutory requirements, NYPA is left with about 2% of the Niagara Plant power to sell at market rate to utilities.

Niagara Falls is an amazing asset, producing enough electricity to power 2.5 million homes in a very cheap and green manner. But local residents see many burdens but few benefits from living near the Niagara Plant.

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Currently, about half of the power generated is used locally, mainly through the Replacement and Expansion Power contracts with local companies (38%), plus the 17% that goes to National Grid, NYSEG, and Rochester Gas and Electric – enough to provide about 5% of the power they sell to local customers.<sup>lxxii</sup> As of 2012, the power currently going to these three utilities will be used instead for the statewide Recharge NY program, so it appears that western New York will see even less benefit from it.<sup>lxxiii</sup> (The switch to Recharge NY also leaves it unclear how NYPA will meet the federal requirement of using at least 50% of Niagara Plant power for residential customers).<sup>lxxiv</sup>

Living near the Niagara Plant does not result in cheap electricity. Residential customers in Erie and Niagara Counties pay electric bills at rates 50% higher than the national average – a difference that adds up to some \$400 per year.<sup>lxxv</sup> The only residential customers in the state who get cheap electricity from the Falls are those served by non-profit municipal utilities and rural cooperative utilities, who get 33% of the power from the Plant at a very low rate.

No residents in Niagara County are served by these non-profits, and in Erie County, only Springville and Akron are. As a result of this system, residents served by the non-profit utilities in places like Akron pay much lower electric bills than those served by private utilities. The Village of Springville advertises that its

customers pay about one fourth the rate of neighboring communities.<sup>lxxvi</sup> Where the average National Grid residential customer was paying \$90 per month in 2006, the average Akron customer was paying \$31.<sup>lxxvii</sup>

The Niagara Plant was opened in 1961, replacing two privately owned facilities. The creation of the plant, led by Robert Moses, then the chair of NYPA, had severe impacts on local communities and ecologies. NYPA seized some 500 acres of Tuscarora Indian land to build the plant; the Tuscarora protested but lost, in a case that made it to the U.S. Supreme Court.<sup>lxxviii</sup> NYPA blasted 13 million cubic yards of rock and transported 34 million cubic yards of stone and earth, dumping much of it in the Escarpment and wrecking ecosystems there. It built intakes and tunnels to carry the water 4.5 miles from the river to the generation plant and created the Robert Moses Parkway along the river and gorge, which ruined wetlands and other environmentally important areas.<sup>lxxix</sup>

The shift from privately owned plants to a public authority was disastrous for local governments and school districts, because NYPA does not pay property taxes. NYPA's 2,900 acres of property in Niagara County has an assessed value of \$1.8 billion.<sup>lxxx</sup> From 1982 to 2003, this exemption cost Niagara Falls alone roughly \$239 million in city and school taxes. The local communities may want to press NYPA for a payment in lieu of

taxes. There is some history of state government compensating local communities for loss of property tax revenue; for example, the State pays Albany over \$10 million per year in payments in lieu of taxes for its land holdings in the city.<sup>lxxxix</sup>

For many decades, the Niagara Falls Power Plant has been NYPA's golden goose, with its profits used to subsidize downstate projects, pay for its "gold-plated bureaucracy," and help the State plug deficit holes in its general fund. In one audit, the state comptroller found that some \$2 billion in profits from the Niagara and Massena plants had been used to cover \$1.1 billion in losses from 1987 to 1994 in other aspects of NYPA's operations.<sup>lxxxii</sup> The State frequently turns to NYPA for "sweeps" or "voluntary contributions" to help it meet its budget (\$170 million from 2003 to 2005, and \$500 million in 2011).<sup>lxxxiii</sup>

In general a 2001 study commissioned by NYPA found that only 14% of the Niagara plant's economic benefit stayed in Western New York.<sup>lxxxiv</sup> This figure is not surprising because, as we have seen, about half the low cost power from Niagara goes to other parts of the state or other states, and, of the power used locally, much of it goes to big out-of-state companies like Olin and Occidental that employ very few local workers, or to for-profit utilities like National Grid and NYSEG. Except for the residents of Akron and Springville, none of it goes directly to local residents. Below, we examine in more detail the two main ways

that NYPA has addressed regional needs: Replacement and Expansion Power, and Relicensing agreements.

### **Replacement and Expansion Power**

Federal and state law reserve more than one third of the generation capacity of the Niagara plant for industry within 30 miles of the plant, to be sold slightly above cost, which translates into about one fifth the current market rate (in 2008, for example, it was 1.6 cents per kilowatt-hour compared to 6 cents on the open market).<sup>lxxxv</sup> NYPA makes individual contracts with local companies for low cost power; many of those contracts expire in 2013.

**Problem: NYPA has violated its legal duty to devote more than one third of the power from the Niagara Plant to businesses within 30 miles of the Plant.**

*Solution: Require NYPA to make up for all the lost subsidies with additional allocations to Western New York businesses.*

As of March 31, 2011, there were 101 allocations of Expansion Power to 71 companies, totaling 237.6 MW, with 12.4 MW unallocated, and 130 allocations of Replacement Power to 76 companies totaling 421.3 MW, with a balance of 23.7 MW was available for allocation.<sup>lxxxvi</sup> Many companies receive both Expansion and Replacement Power.

Replacement Power is reserved for customers of the private plants that the Niagara plant replaced. These companies are required to meet only very relaxed standards on jobs to retain their power, when their contracts come up for renewal. The “new” customers, in contrast, who receive the Expansion Power, must meet somewhat stricter criteria: ten factors including jobs, wages and benefits, investment in the facility by the owners, etc. Enforcement is limited, however; between 2003 and 2005, 23 companies failed to meet their job obligations, but only six had their allocation reduced.<sup>lxxxvii</sup>

Although some 100 local companies get low cost power, two thirds of it goes to just ten companies. Recipients include Delphi, Ford, GM, DuPont, Moog, Goodyear-Dunlop, General Mills, Praxair, American Axle. Most of the biggest recipients are owned and headquartered elsewhere. The two biggest recipients are the Olin Corporation, headquartered in Missouri, and Occidental Chemical, which is headquartered in Dallas. Although employing just 418 workers (1% of the workers in these programs), they receive some 29% of the power, at discounts worth \$53 million.<sup>lxxxviii</sup> A national expert on economic development subsidies called these “probably the biggest he has come across.”<sup>lxxxix</sup> All together, the participating companies get almost as much in subsidies (\$272 million in 2001) as they pay in state and local taxes (\$293 million in 2001).<sup>xc</sup> Subsidies this rich do

relatively little for the local economy, as their benefits flow mainly to the out-of-town owners of the companies.

Starting around 2000, plant closings and downsizings led to some of the allocation not being used. In 2008, the Buffalo News found that one fifth of the low cost power earmarked for local businesses had gone unused over the past four years and had instead been sold by NYPA for an estimated \$161 million.<sup>xci</sup> Local business owners and elected leaders complained that NYPA was being overly restrictive in its allocations and not working to find new customers that met its criteria.

In 2005, state legislation required that proceeds from the sale of 70 megawatts of the unused power be used to fund the Energy Cost Savings Benefit program, subsidizing electric bills for 105 companies around the state, of which only 3 were in Erie and Niagara counties.<sup>xcii</sup> As of May 2007, the power had netted about \$26 million for the program. The State had amended the law to make 70 megawatts available for Western New York in 2007, but as of May 2007 only 2 megawatts had been allocated. The law expired June 30, 2007.<sup>xciii</sup> Meanwhile, the State had created another program financed by the sale of unused Expansion Power, the Industrial Incentives Awards, and funded some ten large projects around the state with that (none in western New York).

Niagara County interests sued NYPA over the money in 2009; their suit was dismissed but remains on appeal. Meanwhile, in April 2009 Congressman Higgins threatened to introduce federal legislation on the issue; after months of negotiation, NYPA agreed to amend its Industrial Incentive program to make a large award to the Canal Side project in Buffalo (see below for more information on this deal).<sup>xciv</sup>

William Ross, chair of the Niagara County legislature, would like a similar deal for Niagara County. On behalf of most of the county's mayors and town supervisors, he crafted a "Niagara Initiative" calling for a new public works building, restoration of locks in Lockport, the development of an industrial park in North Tonawanda at a cost of some \$225 million. Mayor Dyster of Niagara Falls, who is not part of that initiative, has his own proposal for some \$110 million in spending in Niagara Falls on tourism, infrastructure, and a science and technology center at Niagara University.<sup>xcv</sup>

In 2010, the State passed legislation to create yet another pool of economic development funds from the sale of the unused power, estimated at from \$5 million to \$15 million per year, but State legislators, development officials, and NYPA have been arguing about how to implement the law and the fund has not been established. NYPA argues that the advisory panel created by the law to screen and recommend applicants lacks legal



standing, and that not all the proceeds from the sale of the unused power should go into the pool. The bill's sponsors, George Maziarz and Dennis Gabryszak, disagree with NYPA. They introduced a new bill in 2011 that would move funding authority from NYPA to the ESDC; the bill passed the Senate but did not come to a vote in the Assembly.<sup>xcv</sup>

NYPA data showed profits from the sale of unused power of some \$8.5 million from August 2010 to July 2011. NYPA also showed that it had reduced the percent of power going unused from 17 percent in 2008 to 13 percent in 2011, and that it had already earmarked all but 1.6% of it to present and future uses, which would greatly reduce the revenue stream in the future, as those new users come online.<sup>xcvii</sup>

To summarize, the Replacement and Expansion Power programs have brought surprisingly little benefit to Buffalo-Niagara. Much of the power has been wasted on a handful of large, non-local companies that produce very few jobs, and NYPA has taken the unused power from the program and, rather than devoting it to Buffalo-Niagara, has used it to pad its own bottom line or to spread it to companies around the state through other programs. This misallocation is possibly illegal and certainly unjust and wasteful.

## Relicensing

In March 2007 the Federal Energy Regulatory Commission granted NYPA a new 50 year license to operate the Niagara Plant. The re-licensing ended a spate of separate negotiations with local governments and other institutions.

The re-licensing settlements included \$59.5 million in “license measures,” designed specifically to mitigate the negative impacts of the Plant. These include habitat improvement projects (to remedy harm from water fluctuation), public access improvements, a parks and recreation fund, and capital improvements to the local sewer system.

The settlements also included \$324.8 million in “non-license measures” negotiated with various parties. The largest agreement was with the Niagara Power Coalition. In the early 1990s seven municipalities formed the Niagara Power Coalition to negotiate with NYPA over the relicensing. The seven were Niagara County, the city of Niagara Falls, the towns of Niagara and Lewiston, and three school districts: Lewiston-Porter, Niagara Falls, and Niagara-Wheatfield. The Niagara Power Coalition negotiated a

**Problem: Under NYPA’s leadership, Western New York sees more burdens than benefits from hosting one of the state’s greatest assets: the Niagara Power plant.**

*Solution: Require NYPA to devote more of its low-cost power to residential and business customers in Western New York.*

deal with NYPA under which they will divide \$5 million per year for 50 years and also can buy 25 megawatts of low cost power to use themselves or use for economic development.<sup>xcviii</sup>

Another settlement was with the Tuscarora Nation, which received \$21.8 million, one MW of power, and a 52 acre parcel of land.<sup>xcix</sup> NYPA then reached additional deals with Niagara University, which received a capital fund of \$9.5 million, a landscape fund of \$1 million, a 24 acre parcel of land, and 3 MW of discounted power.<sup>c</sup>

Lastly, NYPA made a deal with Erie County and the City of Buffalo under which it would support the redevelopment of Canal Side on Buffalo's waterfront (described more fully below).

As part of the settlement agreements, NYPA agreed to set up four Greenway funds, administered by four standing committees: Buffalo and Erie County (\$2 million per year); Greenway Ecological (\$1 million per year); Host Community Greenway Fund (\$3 million per year), and State Parks (\$3 million per year). New York State then established a Niagara River Greenway Commission to create a Greenway Plan and to make recommendations for funding, but it is the Standing Committees created by the Relicensing Agreement, not the Greenway Commission, who ultimately choose, manage, and supervise the projects funded with the NYPA money.<sup>ci</sup>

Many observers have questioned how closely the Standing Committees are following the Greenway Plan and have accused them of frittering the money away on isolated pet projects rather than using it strategically to build an outstanding, integrated Greenway.<sup>cii</sup> For example, the Host Community Standing Committee recently awarded \$15,000 to the Historic Lewiston Jazz Festival, despite the fact that it was an event rather than a project, and despite the fact that it apparently violated the Relicensing Agreement provision that projects that already existed before 2007 could not be funded. The Committee also approved funding for a War of 1812 reenactment and for a Tuscarora Heroes monument in Lewiston.<sup>ciii</sup>

The Relicensing Deal led to many regional benefits, but many observers felt that the region did not get all that it should have. While there was talk of a one billion dollar deal, NYPA calculated its expenses over the 50 years of the Relicensing Agreement, in inflation adjusted dollars, at \$391 million, or \$7.8 million per year – the equivalent of 17 days of net profits at the plant’s current rate of profit.<sup>civ</sup>

Clearly, NYPA had its own institutional priorities during the process, which often conflicted with those of other actors, and there was no effective superseding authority to provide direction. The result was a wasteful and corrupting free-for-all as different agencies and interest groups scrambled to make deals.

NYPA spent more than \$45 million on the relicensing effort, including large sums for lawyers and consultants.<sup>cv</sup> One of NYPA's strategies was to buy off potential opponents with contributions. Thus, it donated \$7.1 million to the Niagara Falls School Board to renovate recreational facilities, on the condition that the School Board support its relicensing efforts.<sup>cvi</sup> NYPA also increased its "community contributions" to groups in Niagara and Erie Counties; having averaged \$94,000 from 1999 through 2004, they soared to \$264,000 in 2005. Erie County received a \$40,000 donation; and NYPA increased its annual contribution to the Buffalo Niagara Partnership from \$25 in 2003 to \$5,000 in 2004 to \$50,378 in 2005.<sup>cvi</sup>

NYPA picked off potential opponents one by one. The Niagara Power Coalition of local municipalities began with a strong campaign. But after NYPA voiced displeasure with the aggressive stance of the Coalition, it changed its tack and fired its lawyer with relicensing experience in favor of Republican insiders with no particular expertise: Mercury Public Affairs, a firm very close to Governor Pataki, and Harris Beach law firm, one of whose partners was (and is) on the NYPA board. The Coalition reached its own deal in late winter of 2004.<sup>cviii</sup>

"As soon as they split off, made their own deal, it was every man for himself," according to Kevin Donovan, a senior official with

the United Auto Workers who was involved in the negotiations and who tried to unite all the groups involved in a Community Consensus Committee. “We were going to negotiate as one, but everyone was going and doing their own thing.”<sup>cix</sup>

In addition to fighting NYPA and coping with internal dissension, advocates had to cope with opposition from groups that were already receiving cheap power and did not want to disrupt the status quo. Two powerful groups entered the battle on the other side, trying to prevent NYPA from increasing its settlement offers. One group included 51 municipal utilities and rural cooperatives; the other, Power for Economic Prosperity, led by Praxair, included 22 local industries that receive 80 percent of the replacement and expansion power.<sup>cx</sup>

### **Mission Creep and Corporate Capture**

In New York, many entities that should be focused on other missions are performing economic development functions.<sup>cxii</sup> NYPA is a public utility. Its mission should be to produce power as cheaply and cleanly as possible for all the residents and businesses of New York. And yet NYPA runs the biggest economic development programs in the state. Because NYPA is a “shadow government” operating with much autonomy, it is particularly prone to corporate capture.

In 2007, after threatening to leave the state, Alcoa reached a deal with the State for \$5.6 billion in low cost power (one quarter of market rate) over 30 years, in exchange for a promise to invest \$600 million in its Massena facility and not to eliminate more than 165 jobs from its work force of 1,065. In a kind of subsidy kickback, Alcoa also agreed to fund a \$10 million regional economic development fund to be administered jointly by NYPA and ESDC. <sup>cxii</sup>

NYPA can give outlandish subsidies like the Alcoa deal because it can afford to. It is an autonomous authority with revenues that far outstrip its expenses. It does not have to balance that \$5.6 billion gift to Alcoa against cuts in public education and health care.

Because NYPA tends to turn a large profit each year, based largely on the Niagara Plant, it becomes a kind of slush fund to be raided by those with enough political might to do so. Sometimes, this results in the State “sweeping” NYPA revenues

**Problem: NYPA, which should be in the power business, is poorly suited to doing economic development and does so in isolation from other economic development program, in an often ad hoc and politicized manner.**

*Solution: Begin process of moving economic development functions to Empire State Development, and prioritizing NYPA’s primary mission of providing low-cost power for all New York residents. and businesses.*

into the general fund to balance the budget. Sometimes, it results in the funding of pet projects, such as Canal Side.

As part of its relicensing deal with the city of Buffalo and Erie County, NYPA agreed to pay:

- \$1 million per year to the Empire State Development Corporation;
- \$4 million in two lump sum payments to the Erie Canal Harbor Development Corporation;
- An initial payment of \$2.5 million to a Waterfront Development Fund, followed by \$1 million per year, plus an additional annual sum based on the net value of MW of power.<sup>cxiii</sup>

At the urging of Congressman Brian Higgins, who was pressing NYPA over its sale of unused Replacement and Expansion power, NYPA agreed in fall 2010 to sweeten the Canal Side relicensing deal by making its payments over 20 years instead of 50, yielding a net present value of \$8.4 million per year for 20 years – enough to finance \$105 million to \$110 million in bonds to pay for infrastructure at Canal Side.<sup>cxiv</sup>

In addition, NYPA made an Industrial Incentive award to Canal Side. In 2009, NYPA's Economic Development Power Allocation Board (EDPAB) had approved a plan to make Industrial Incentive Awards to companies at identifiable risk of closure or relocation



to another state. On February 2, 2010, EDPAB approved a modified plan to allow the use of Industrial Incentive money for the Erie Canal Harbor Development Corporation, in the amount of \$3.7 million per year for 20 years (2010 to 2029). While the other awards had included specific job commitments, this award did not.

The bright side of this change was that, under pressure from Congressman Higgins and others, NYPA was returning some of the Expansion Power money to western New York, where it belongs. Canal Side was the first local project to get Industrial Incentives funding, and it received the largest award yet.

The downside was the ad hoc, politicized nature of the change and the questionable nature of the Canal Side project at that time. The Industrial Incentives program, which had been directed toward distressed industrial businesses at risk of closing or leaving the state, was suddenly altered to include a new, multi-use project which was then centered on a big box retail store (Bass Pro). At the meeting approving the deal, the Vice-Chair of NYPA, Jonathan Foster, complained about the "significant reallocation of monies" done on a "very fast timetable," with the public announcement of the deal coming before the trustees had even voted on it. He did not feel that the project was consistent with NYPA's mission or fiduciary

responsibilities and was very frustrated with how it was handled.<sup>cxv</sup>

Eyebrows were further raised when ECHDC and ESDC attempted to hire the law firm of Harris Beach as bond counsel (at \$400 per hour) to sell the bonds that NYPA was funding – despite the fact that NYPA chair Michael Townsend is a partner at Harris Beach. (The bond counsel contract was revoked after news reports drew attention to the conflict of interest).<sup>cxvi</sup>

The deal also highlighted the cozy, corporate-friendly nature of the NYPA board. The seven-member board of NYPA, appointed by the Governor, has six strongly corporate members and one retired judge. Most of the members are heavy contributors to political campaigns.

The Canal Side project itself was an illustration of the extent to which wealthy businesses and individuals can capture state agencies. The State was prepared to offer the Bass Pro company some \$60 million in subsidies to locate an outdoor store in downtown Buffalo. This idea had its origin in the friendship between Robert Rich, Jr., of Rich Foods, and his Florida neighbor and fishing friend, Johnny Morris, the owner of Bass Pro. The State created the Erie Canal Harbor Development Corporation to do the deal, and placed a close friend, an employee, and the wife of Robert Rich on the board to see it

through, and put large sums of NYPA money at their disposal to do it.<sup>cxvii</sup>

NYPA should not be in the development business. Ideally, all the power from the Niagara Plant would be used to provide green, low-cost electricity to all the residents and businesses of western New York. The government would not waste inordinate resources picking which businesses should receive low cost power, and which not. It would not send low cost power to some lucky customers of rural and municipal utilities while leaving all other residential customers to pay 50% over the national average.

### **Conclusion**

New York should return to a traditional economic development policy focused on the delivery of public goods such as infrastructure, education, and the preservation of natural resources. The great economic development projects of the past were projects such as the Erie Canal, the Land Grant Colleges, and the GI Bill. Particularly in times of fiscal stress, the State should spend money on public goods, not private businesses. The notion that tax exemptions are “free money” has no support in the facts, but it proves irresistible to elected leaders. In reality, very few tax exemptions lead to a larger economic pie and more tax revenue. Nearly all come at the expense of higher taxes for other taxpayers and cuts in vital public services and programs.

When government does offer tax incentives, it should use strict criteria to ensure that they go to projects that

- Grow the state's economy instead of simply helping one competitor at the expense of others;
- Could not be done without government assistance;
- Provide quality jobs;
- Support communities and neighborhoods, particularly those in economic distress; and
- Preserve natural resources.

To accomplish these goals efficiently, New York should radically streamline its development programs, removing them from agencies like NYPA that have or should have different missions, and eliminating redundancies like the nine IDAs serving Buffalo Niagara. Governance of economic development agencies should be made more accountable and democratic, and information about their activities should be made more accessible to the public.

The Regional Economic Development Councils should learn from the State's experience with NYPA and the IDAs as they develop their strategic plans, funding criteria, and recommendations for policy change. New York cannot afford economic development programs that generate waste; now is the time to generate change.





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<sup>i</sup> The strategic plans, due by November 14, 2011, will compete for a pool of \$200 million in grant funds and tax credits. The plans and funding criteria will help guide the allocation of some \$800 million in public resources, as funding applications made through various state agencies such as the Department of Labor and the Department of Homes and Community Renewal will now also be reviewed by the REDCS, who will apportion 20 percent of the points used to score the applications.

<sup>ii</sup> Jennifer Levitz, "States to Business: Give Our Cash Back," *Wall Street Journal*, April 22, 2011

<sup>iii</sup> *Ibid.*

<sup>iv</sup> Fiscal Policy Institute, *The Growing Budget Burden of New York's Business Tax Expenditures*, December 2010.

<sup>v</sup> Article 18-A, sections 852, 858, NYS General Municipal Law

<sup>vi</sup> NYS State Comptroller, *Annual Performance Report on New York State's Industrial Development Agencies, Fiscal Year Ending 2009 (July 2011)*.

<sup>vii</sup> *Ibid.*

<sup>viii</sup> *Ibid.*

<sup>ix</sup> NYS General Municipal Law, Article 18-A, Section 874(4)(a).

<sup>x</sup> Only one of the 13, Prometheus Books, exports outside the U.S.

<sup>xi</sup> While this report focuses on the Erie County, Niagara County, and Amherst IDAs, it is important to note that other IDAs approve similar projects; for example, the Lancaster IDA recently awarded tax breaks for the expansion of a national chain restaurant, the Olive Garden – a project that will surely suck more revenue out of the region than it adds. See Stephen T. Watson, "Lancaster agency grants tax breaks to family restaurant for expansion," *Buffalo News*, August 10, 2011.

<sup>xii</sup> David Robinson, "HSBC granted \$79 million in tax breaks by Amherst IDA," *Buffalo News*, 11/18/06.

<sup>xiii</sup> Jonathan Epstein, "M&T plans to buy HSBC's data center in Amherst," *Buffalo News*, July 13, 2011.

<sup>xiv</sup> David Robinson, "Fantasy Island to get tax breaks," *Buffalo News*, 2/12/08.

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<sup>xv</sup> Greg Leroy, *The Great American Jobs Scam* (Berret-Kohler, 2005), p. 47.

<sup>xvi</sup> *Ibid.*, p. 52.

<sup>xvii</sup> David Robinson, "Collins wants tighter rules on tax breaks," *Buffalo News*, 2/17/08.

<sup>xviii</sup> This shift has happened throughout upstate New York. From 1980 to 2009 in upstate New York, the number of jobs in goods production and distribution dropped from some 900,000 to less than 800,000, while the number of jobs in producer and consumer services rose from roughly 850,000 to over 1.4 million. In fact, upstate now has less jobs in goods production and distribution (20%) than the national average (22%), and more in consumer services (35%) than the national average (29%). The health of our economy is now resting on call center workers and hotel staff rather than on steelworkers and autoworkers. See Richard Dietz, "Changes in the Workforce of Upstate New York," June 9, 2011 (Federal Reserve Bank of New York).

<sup>xix</sup> Partnership for the Public Good, "Low Wage Work in Western New York" (2008), at [www.ppgbuffalo.org](http://www.ppgbuffalo.org).

<sup>xx</sup> 2009 census data from [www.census.gov](http://www.census.gov)

<sup>xxi</sup> Testimony of James Parrott, Chief Economist, Fiscal Policy Institute, before the New York State Division of Budget, Public Hearing on Economic Development, 12/18/2007.

<sup>xxii</sup> Partnership for the Public Good, "Low Wage Work in Western New York" (2008), at [www.ppgbuffalo.org](http://www.ppgbuffalo.org).

<sup>xxiii</sup> Paul Lane, "Fatality at construction site," *Niagara Gazette*, October 3, 2007.

<sup>xxiv</sup> Good Jobs First, *Jurisdictions with Jobs Quality Standards*, [www.goodjobsfirst.org](http://www.goodjobsfirst.org), and National Employment Law Project, *Local Living Wage Ordinances and Coverage*, [www.nelp.org](http://www.nelp.org).

<sup>xxv</sup> Census Bureau, 2005-2009 American Communities Survey

<sup>xxvi</sup> City of Buffalo Comprehensive Plan, p. 20.

<sup>xxvii</sup> *Ibid.*

<sup>xxviii</sup> Irene Pijuan, "Poverty in the City of Buffalo" (2008), available at <http://develop.wikispaces.com/Poverty>.

<sup>xxix</sup> [www.diversitydata.org](http://www.diversitydata.org), Harvard School of Public Health.

<sup>xxx</sup> Niagara County Center for Economic Development, *Niagara County Comprehensive Economic Development Strategy* (June 2010)



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<sup>xxx</sup> Ibid., p. 15.

<sup>xxxii</sup> Ibid., p. 26.

<sup>xxxiii</sup> Partnership for the Public Good, "The City of Buffalo's Abandoned Housing Crisis" (2011), [www.ppgbuffalo.org](http://www.ppgbuffalo.org).

<sup>xxxiv</sup> See Rod Watson and Jonathan Epstein, "The High Cost of Being Poor," *Buffalo News*, Sam Magavern, "Subprime Lending: the Rotten Core of the Current Financial Crisis," *Buffalo News*, 10/3/08.

<sup>xxxv</sup> Allison Lack, "Sprawling by the Lake: How IDA-Granted Property Tax Exemptions Undermine Older Parts of the Buffalo/Niagara Metro Area," *Good Jobs First* (2007).

<sup>xxxvi</sup> David Robinson, "The pros and cons of IDA tax breaks," *Buffalo News*, September 25, 2011.

<sup>xxxvii</sup> Thomas Prohaska, "Greenhouse gas program hurts AES power plant, lawmakers say," *Buffalo News*, August 17, 2011.

<sup>xxxviii</sup> Janice Habuda, "Tax deal for Huntley power plant spawns new dispute," *Buffalo News*, August 19, 2011; and [www.scorecard.org](http://www.scorecard.org).

<sup>xxxix</sup> Daniel Pye, "Erie County IDA approves Huntley plant bond boost," *Tonawanda News*, August 6, 2007.

<sup>xl</sup> NYS State Comptroller, Annual Performance Report on New York State's Industrial Development Agencies, Fiscal Year Ending 2009 (July 2011).

<sup>xli</sup> *Main Seneca Corporation et al v. Town of Amherst Industrial Development Agency*, 100 N.Y.2d 246; James Fink, "Another Battle Brewing Over Amherst IDA Lease," *Buffalo Business First*, 6/28/96.

<sup>xlii</sup> David Robinson, "Uniland to receive tax breaks," *Buffalo News*.

<sup>xliii</sup> For agency budgets, see their web sites: [www.ecidany.com](http://www.ecidany.com), [www.nccedev.com](http://www.nccedev.com), and [www.amherstIDA.com](http://www.amherstIDA.com). For comparison, in 2004 the AIDA's expenditures were \$396,000 and the ECIDA's were \$1.9 million. See Sam Magavern, *Missing the Target: How Economic Development Programs Have Failed to Revive Buffalo's Most Challenged Neighborhoods* (2009), at [www.ppgbuffalo.org](http://www.ppgbuffalo.org).

<sup>xliv</sup> Town of Amherst Industrial Development Agency and Town of Amherst Development Corporation 2010 Annual Report;

<sup>xlv</sup> James Heaney, "Sweet deals lure major data centers," *Buffalo News*, November 7, 2010.

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- <sup>xlvi</sup> James Heaney, “Deep pockets help Verizon promote its interestes,” Buffalo News, November 14, 2010.
- <sup>xlvii</sup> Matthew Spina, “Backer of Collins reaps big money from IDA deal,” Buffalo News, October 2, 2011.
- <sup>xlviii</sup> Personal communication, IDA board member, 2011.
- <sup>xliv</sup> NYS General Municipal Law, section 891-a.
- <sup>i</sup> NYS General Municipal Law, section 856(2).
- <sup>ii</sup> Seizing the Moment, citing Good Jobs First, Examples of Clawback Provisions in State Subsidy Programs,  
[http://www.goodjobsfirst.org/sites/default/files/docs/pdf/clawbacks\\_chart.pdf](http://www.goodjobsfirst.org/sites/default/files/docs/pdf/clawbacks_chart.pdf)
- <sup>iii</sup> Ibid., citing Minnesota Statutes section 1161.994.
- <sup>iiii</sup> Ibid., citing Virginia Code section 58.1-439.
- <sup>lv</sup> Ibid., citing Connecticut Statutes Title 32, chapter 578, sec. 32-5a
- <sup>lv</sup> Jennifer Levitz, “States to Business: Give Our Cash Back,” Wall Street Journal, April 22, 2011
- <sup>lvi</sup> Countywide Industrial Development Agency Uniform Tax Exemption Policy, Section X
- <sup>lvii</sup> Richard E. Baldwin, “Board writes off \$3.4 million in delinquent PILOTs,” Buffalo News, July 1, 2011.
- <sup>lviii</sup> See the Illinois Accountability Project at [www.ilcorpacct.com](http://www.ilcorpacct.com).
- <sup>lix</sup> New York State Comptroller, “New York Power Authority: Selected Management and Operating Practices” (2011).
- <sup>lx</sup> EDP is power voluntarily relinquished by businesses, except for power from the Niagara or Saint Lawrence – FDR projects or power from the Power for Jobs program. As of March 31, 2011, 259.7 MW of power had been relinquished. Of that, NYPA had allocated. See NYPA, 2010 Report to the Governor and Legislative Leaders on Power Programs for Economic Development (April 2011).
- <sup>lxi</sup> PFJ was created by state law in 1997, with low cost power granted to companies in three year contracts in exchange for promises to create or retain jobs (later, a rebate option was added as well). The 2011-2012 State Budget replaces PJF with “Recharge New York,” so PJF will expire on June 30, 2012. Ibid.

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<sup>lxii</sup> Under state law, NYPA must identify the net revenues from the sale of Expansion Power and submit, for approval by the Economic Development Power Allocation Board (EDPAB), a plan to use that revenue for Industrial Incentive Awards. See NYS Public Authorities Law Section 1005. Recent net revenues have totaled \$7.6 million (2008), \$7.8 million (2009), and \$6.4 million (2010). NYPA has made roughly 10 Industrial Incentive Awards thus far. See NYPA, 2010 Report to the Governor and Legislative Leaders on Power Programs for Economic Development (April 2011).

<sup>lxiii</sup> In 2005 and 2006, the State passed legislation authorizing up to 70 MW of unallocated Replacement Power to be used for Energy Cost Savings Benefit awards to mitigate rate increases for business customers throughout the state, provided that the full 70 MW is deemed to be available for allocation in western New York. NYPA, 2010 Report to the Governor and Legislative Leaders on Power Programs for Economic Development (April 2011); see also NYS Public Authorities Law Section 1005, subd. 13

<sup>lxiv</sup> NYPA, 2010 Report to the Governor and Legislative Leaders on Power Programs for Economic Development (April 2011).

<sup>lxv</sup> James Heaney, "Alcoa cuts deal for low-cost hydropower," Buffalo News, December 22, 2007.

<sup>lxvi</sup> New York State Comptroller, "New York Power Authority: Selected Management and Operating Practices" (2011).

<sup>lxvii</sup> James Heaney, "Generating Profits," Buffalo News, April 30, 2007.

<sup>lxviii</sup> James Heaney, "A taste for posh restaurants," Buffalo News, May 1, 2007.

<sup>lxix</sup>

[http://www.syracuse.com/news/index.ssf/2009/03/new\\_york\\_power\\_authority\\_rethi.html](http://www.syracuse.com/news/index.ssf/2009/03/new_york_power_authority_rethi.html)

<sup>lxx</sup> 16 U.S.C sections 836-836a.

<sup>lxxi</sup> 16 U.S.C sections 836-836a.

<sup>lxxii</sup> James Heaney, "Power failure," Buffalo News, April 29, 2007

<sup>lxxiii</sup> It is hard to know how much benefit residential customers have seen from the low cost power sold to the for-profit utilities. When discontinuing the program was discussed in 2007, National Grid argued that loss of the allocation would lead to an 8 percent increase in residential rates. See James Heaney, "Low cost power going up for grabs while officials sit back," Buffalo News, May 13, 2007. But in announcing the discontinuation of the program, NYPA president Richard Kessell stated that the value of the program was only 70 cents per month per resident in most cases. See Mark Scheer, "NYPA approves money for utility companies, state," Niagara Gazette, June 28, 2011.

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<sup>lxxiv</sup> NYPA has allocated \$100 million for the three private utilities to continue the residential discount program through 2013, \$70 million for 2014, \$50 million for 2015, and \$30 million for 2016, but it is unclear how this meets the federal requirement. See Mark Scheer, "NYPA approves money for utility companies, state," Niagara Gazette, June 28, 2011. Meanwhile, in August 2011 NYPA proposed a 29.5% increase in the price of its "preference" power, from the current rate of \$10.71 per megawatt-hour to \$13.87 in May 2014. See Thomas Prohaska, "Leaders targeting proposed Power Authority rate hikes," Buffalo News, August 10, 2011.

<sup>lxxv</sup> James Heaney, "Power failure," Buffalo News, April 29, 2007. As Heaney details, as of 2007, New York state residents were paying 16.2 cents per kilowatt hour, compared to a U.S. average of 9.9 cents. Commercial users were paying 12.7 cents, compared to a national average of 9 cents, and industrial users were paying 8.1 cents, compared to a national average of 5.8 cents. One reason for New York's high rates is that it uses much more oil to make power than the national average; New York gets 14% of its electric power from oil, compared to a national average of 3%; and it costs 28.8 cents per kilowatt to make power from oil, as compared to 2.3 cents for coal, and 0.5 cents for hydropower. Another reason is the way that New York deregulated its electric utilities. According to one study, New Yorkers pay twice the rate for electricity as customers in regulated states. See "Electricity Price Trends in New York Compared to trends in Price-Regulated States," Power in the Public Interest (2007).

<sup>lxxvi</sup> [http://www.villageofspringvilleny.com/public\\_services.php3](http://www.villageofspringvilleny.com/public_services.php3)

<sup>lxxvii</sup> James Heaney, "Power failure," Buffalo News, April 29, 2007

<sup>lxxviii</sup> Bill Michelmore, "One nation, divided by a pact," Buffalo News, January 4, 2008

<sup>lxxix</sup> James Heaney, "Plant's downside largely unaddressed in relicensing deal," Buffalo News, May 1, 2007.

<sup>lxxx</sup> Stephen T. Watson, "Reassessing non-profits' free ride," Buffalo News, July 18, 2011.

<sup>lxxxi</sup> James Heaney, "Plant's downside largely unaddressed in relicensing deal," Buffalo News, May 1, 2007.

<sup>lxxxii</sup> James Heaney, "Generating Profits," Buffalo News, April 30, 2007.

<sup>lxxxiii</sup> Ibid., and Mark Scheer, "NYPA approves money for utility companies, state," Niagara Gazette, June 28, 2011.

<sup>lxxxiv</sup> James Heaney, "Generating Profits," Buffalo News, April 30, 2007.

<sup>lxxxv</sup> James Heaney, "Our Power, Their Dollars" Buffalo News, June 9, 2008.

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<sup>lxxxvi</sup> NYPA, 2010 Report to the Governor and Legislative Leaders on Power Programs for Economic Development (April 2011).

<sup>lxxxvii</sup> James Heaney, "Putting power to work for WNY," Buffalo News, January 13, 2008, and editorial, "Rethink Niagara Power," Buffalo News, January 25, 2008.

<sup>lxxxviii</sup> James Heaney, "Putting power to work for WNY," Buffalo News, January 13, 2008.

<sup>lxxxix</sup> James Heaney, "Power failure," Buffalo News, April 29, 2007

<sup>xc</sup> Ibid.

<sup>xc</sup> James Heaney, "Our Power, Their Dollars" Buffalo News, June 9, 2008.

<sup>xcii</sup> Ibid.

<sup>xciii</sup> James Heaney, "Lowcost power going up for grabs while officials sit back," Buffalo News, May 13, 2007.

<sup>xciv</sup> James Heaney, "Politics keeps aid trapped in pipeline" Buffalo News, July 11, 2011

<sup>xcv</sup> Ibid.

<sup>xcvi</sup> Ibid.

<sup>xcvii</sup> Ibid.

<sup>xcviii</sup> James Heaney, "Plant's downside largely unaddressed in relicensing deal," Buffalo News, May 1, 2007

<sup>xcix</sup> Niagara Power Project Relicensing Offer of Settlement and Explanatory Statement, pp. 34-35.

<sup>c</sup> Supplement to the Niagara Power Project Relicensing Offer of Settlement and Explanatory Statement

<sup>ci</sup> Caitlin Connelly, "Niagara River Greenway Commission" fact sheet, available at [www.ppgbuffalo.org](http://www.ppgbuffalo.org).

<sup>cii</sup> See for example Denise Jewell Gee, "Opportunity knocks, and it is green," Buffalo News, August 8, 2011.

<sup>ciii</sup> Thomas J. Prohaska, "Despite concerns, panel awards Greenway funds to jazz festival," Buffalo News, August 10, 2011, and "Undermining the Greenway," editorial, Buffalo News, August 18, 2011.

<sup>civ</sup> James Heaney, "Half a deal," Buffalo News, May 1, 2007

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<sup>cv</sup> Ibid.

<sup>cvi</sup> James Heaney, “Generating Profits,” Buffalo News, April 30, 2007.

<sup>cvi</sup> James Heaney, “Half a deal,” Buffalo News, May 1, 2007

<sup>cvi</sup> In 2007 the state comptroller audited the period from 2000 to 2006 and blasted the Coalition for bad financial practices, including paying more than a half-million dollars for professional services without evidence that the services were provided. Mark Zito, a member of the Niagara Falls School Board, served as executive director of the Coalition, which paid more than \$141,000 to him, his son, and his fiancée, while also spending over \$196,000 for attorneys and over \$192,000 for public affairs consulting. Aaron Becker, “Audit by state faults Power Coalition,” Buffalo News, July 20, 2007.

<sup>cix</sup> James Heaney, “Half a deal,” Buffalo News, May 1, 2007

<sup>cx</sup> Ibid.

<sup>cx</sup> In a small example that illustrates the extent to which large corporations have captured the state’s economic development programs, National Fuel, a private corporation, actually runs an economic development program for the state. This highly profitable and controversial privately owned company runs an “Area Development Program” approved by the state’s Public Service Commission to “provide development grants to community based organizations or local development authorities for specific economic development projects,” giving out annual grants totaling \$750,000 – with money raised from its customers as a regulated monopoly. See Case 04-G-1047, Public Service Commission, State of New York.

<sup>cxii</sup> James Heaney, “Alcoa cuts deal for low-cost hydropower,” Buffalo News, December 22, 2007.

<sup>cxiii</sup> Erie County/City of Buffalo Relicensing Settlement Agreement (6/27/06)

<sup>cxiv</sup> James Heaney, “Bond deal raises claim of conflict,” Buffalo News, August 12, 2010.

<sup>cxv</sup> NYPA Board minutes for July 13, 2010, available at [www.nypa.gov/trustees](http://www.nypa.gov/trustees).

<sup>cxvi</sup> James Heaney, “Harris Beach bond counsel contract revoked,” Buffalo News, August 14, 2011

<sup>cxvii</sup> Kevin Connor and Andrew Stecker, “Corporate Capture at Canal Side,” *Artvoice* v. 9, no. 31.

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Partnership for the Public Good  
[www.ppgbuffalo.org](http://www.ppgbuffalo.org)  
237 Main St., Suite 1200, Buffalo NY 14203

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