

**Guidelines for the  
World Trade Center Utility Restoration and Infrastructure Rebuilding Program  
Category Two  
(adopted April 15, 2004; amended as of August 20, 2004)**

**Program**

The World Trade Center Utility Restoration and Infrastructure Rebuilding Program (the “Program”) is a program established by the New York State Urban Development Corporation d/b/a the Empire State Development Corporation (“ESDC”) in cooperation with the New York City Economic Development Corporation and in consultation with the Lower Manhattan Development Corporation (“LMDC”) to provide assistance to eligible investor-owned utility service providers that suffered substantial losses as a result of the September 11, 2001 attacks on the World Trade Center. The Program is authorized under the Partial Action Plan entitled “Partial Action Plan S-2 for Utility Restoration and Infrastructure Building”, promulgated by LMDC and approved by the United States Department of Housing and Urban Development (“HUD”) on September 15, 2003. As set forth in the Partial Action Plan, the Program will entail six categories of assistance. These Guidelines solely address Category Two assistance, which entails reimbursement to eligible utility providers for expenses related to permanent restoration of utility services and infrastructure improvements in response to the events of September 11, 2001. Guidelines for Category Two were adopted on April 15<sup>th</sup>, 2004 and it is expected that Guidelines will be prepared at a later date to address Program assistance for Categories Three through Six.

**Program Funding**

Funding for the Program is being made available from a \$783 million appropriation to New York State, through LMDC, by HUD. From the \$783 million appropriation, \$750 million has been allocated to fund the Program, of which \$250 million has been initially allocated to Category One expenses and, pursuant to the Partial Action Plan, \$330 million has been allocated to Category Two expenses. LMDC has entered, or shall enter, into a Subrecipient Agreement with ESDC to provide ESDC with Program funds.

**Purpose**

The primary purpose of the Program is to protect businesses and residential customers of the utility providers from bearing the cost of restoration of utility services and the cost of rebuilding the utility infrastructure in Lower Manhattan. To the extent that the utility providers receive assistance for such costs under this Program, those costs will not be borne by the utilities’ customers and the utility providers will not be eligible to apply for a rate compensation increase based upon such costs. Implementation of the Program is expected to have a significant impact on the revitalization and redevelopment of Lower Manhattan and will help ensure that Lower

Manhattan remains an attractive location for residents, businesses and other institutions by offering competitive energy and telecommunication services.

### **Eligible Utility Providers**

A utility provider shall be eligible for funding under the Program if it meets the following criteria:

- (i) it is an investor-owned utility service provider that is regulated by the New York State Public Service Commission, the Federal Energy Regulatory Commission or the Federal Communications Commission; and
- (ii) as of September 11, 2001, and continuing through the date of its application for assistance hereunder, it was operating and providing service in the South of Canal Zone (hereinafter defined); and
- (iii) it incurred substantial damages to its service delivery infrastructure; and
- (iv) it incurred expenses for permanent restoration of utility services and infrastructure improvements in the South of Canal Zone and such expenses have not been reimbursed through insurance, governmental grants, legal claims, federal or state income tax credits (to the extent any may be made available), or other third party sources.

### **South of Canal Zone**

The South of Canal Zone refers to the lower Manhattan area south of Canal Street from the East River to the Hudson River. Specifically, this includes the area within the Borough of Manhattan that is bounded on the north by Canal Street, from the Hudson River to Rutgers Street, then southeast along Rutgers Street to the East River. The South of Canal Zone includes premises fronting on both sides of Canal Street and Rutgers Street.

### **Grant Amount**

To the extent of available Program funds, pursuant to the requirements hereunder, including the specific limitation set forth in the Section below entitled “Grant Amount Modification”, each Eligible Utility Provider will be entitled to a grant equal to seventy five percent (75%) (the “Applicable Percentage”) of its Category Two Eligible Costs (hereinafter defined). The grant will be disbursed in two or more installments.

The initial disbursement(s) of the Grant shall be equal to the lesser of twenty percent (20%) of the estimated grant that the Eligible Utility Provider would receive hereunder for Category Two Eligible Costs based on the good faith certification by the Eligible Utility Provider, provided that the initial disbursement(s) shall not exceed \$30 million. All claims must be supported by adequate documentation and be deemed to be reasonable by ESDC.

Current or former employees of the New York State Department of Public Service (hereinafter referred to as “DPS”) (see below), in cooperation with ESDC, shall perform an examination of the Eligible Utility Provider’s application to validate, or invalidate, as the case may be, Category Two Eligible Costs. Category Two Eligible Costs will be based on accounting concepts applicable to rate making decisions for utility providers in New York State. Based on the determination made by DPS and ESDC, ESDC shall disburse the balance of the grant to the Eligible Utility Provider by not later than December 31, 2005. In the event that the initial disbursement exceeded the Applicable Percentage of its Category Two Eligible Costs, the Eligible Utility Provider will be required to repay ESDC the excess amount.

### **Grant Amount Modification**

The preliminary estimate is that Category Two Program assistance will be approximately \$330 million. To the extent Category Two Program assistance exceeds \$330 million, ESDC shall, in its sole discretion, reallocate funds from other categories to meet the additional funding requirement. If total Program costs for Category One and Category Two, including administrative expenses, exceed \$750 million, ESDC shall reduce the Applicable Percentage.

### **Grant Reconciliation**

Each Eligible Utility Provider that receives a grant hereunder shall have a continuous obligation to diligently pursue all insurance and third party claims that it might have for reimbursement of Category Two Eligible Costs. To the extent an Eligible Utility Provider receives any such payments it shall immediately reimburse ESDC for any payments previously made for such Category Two Eligible Costs.

The obligations under this Section will survive the December 31, 2004 application expiration date.

### **Category Two Eligible Costs**

Generally, Category Two Eligible Costs shall include all genuine and reasonable costs incurred by the Eligible Utility Provider from September 11, 2001 through December 31, 2004 for providing permanent restoration of utility services and infrastructure improvements in the South of Canal Zone (or incurred outside of the South of Canal Zone but primarily in support of South of Canal Zone purposes set forth in these Guidelines), provided, however, that the Eligible Utility Provider will not be reimbursed for such costs to the extent that it has received, or is expected to receive, reimbursement from any other third party, including governmental funding sources, insurers, or any entity from which the Eligible Utility Provider has a bona fide claim, or has received a federal or state income tax credit or through a jurisdictional tariff rate, rate setting adjustment clause, surcharge or similar adjustment. Category Two Eligible Costs must be supported by written documentation to verify such costs in form acceptable to ESDC and must be consistent with the written corporate practices of the Eligible Utility Provider and based on generally accepted accounting principles or regulatory accounting policies or practices.

Subject to the foregoing criteria, Category Two Eligible Costs shall include the following costs:

1. Salaries, Wages and Benefits - includes the incremental or overtime wages, including premium pay, shift differential, dislocation pay for employees working more than the standard work day or during hours outside the normal work day or for hours considered exceptional to the employee or incremental pay for employees working out of location, or other salaries and wages that are demonstrably incremental in nature, over and above normal or business-as-usual ("bau") operating costs.<sup>1</sup> Category Two Eligible Costs for salaries, wages and benefits also include (i) fringe benefits that are related to the overtime wages, provided that the same are based on standard practice of the Utility Provider; and (ii) payroll taxes, social security payments, workers compensation, disability insurance and similar expenses that are directly related to the overtime wages.
2. Equipment, Materials and Supplies - the cost of purchasing equipment, materials and supplies related to the permanent restoration of utility services and infrastructure improvements in the South of Canal Zone. Included within this category are any taxes or surcharges on the equipment, materials and supplies, transportation costs and other related costs deemed appropriate by ESDC. The Category Two Eligible Cost for any specific item shall not exceed the attributable replacement cost as determined by ESDC. By way of example, if the Eligible Utility Provider elected to replace a piece of equipment that served one purpose with enhanced equipment that has multiple purposes, ESDC will determine what portion of the cost of the new equipment equates to the functional equivalent of the replaced equipment and that portion shall be deemed a Category Two Eligible Cost. Further, Category Two Eligible Costs shall be reduced by any salvage value for the replaced equipment, material or supplies, received by, or attributable to, the Eligible Utility Provider.
3. Contract Services – includes the cost of contract work performed by a third party vendor to the Eligible Utility Provider related to the permanent restoration of utility services and infrastructure improvements in the South of Canal Zone, provided that the cost of such work is pursuant to a written contract for the services provided, and is on terms deemed by ESDC to be fair and reasonable and consistent with industry standards and applicable law.
4. Transportation – includes the cost incurred by Eligible Utility Providers (directly or through third party vendors) for moving employees, equipment, material and supplies to and from the South of Canal Zone, including the cost of fuel, related to the permanent restoration of utility services and infrastructure improvements in the South of Canal Zone.

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<sup>1</sup> Non-incremental straight time internal labor costs shall be presumed to be recoverable from a utility's pre-existing and/or current rates and charges in the normal course of business. Such costs shall not be considered reimbursable unless a utility can demonstrate that such costs are truly incremental in nature and over and above "bau" costs.

5. Special Machine Services – includes the cost of maintaining, operating, and using specialty equipment (e.g. cranes, unloaders, pile drivers, scrapers), including the depreciation on equipment owned by the Eligible Utility Providers and rental fees on equipment rented by the Eligible Utility Providers related to the permanent restoration of utility services and infrastructure improvements in the South of Canal Zone.
6. Rents – includes the cost of renting temporary quarters for occupancy by employees and contract workers hired by Eligible Utility Providers with respect to the permanent restoration of utility services and infrastructure improvements in the South of Canal Zone.
7. Insurance/Security/Protection – includes the cost of providing special liability and property insurance related to activities in the South of Canal Zone between September 11, 2001 and December 31, 2004 that related to Category Two activities and the cost of providing temporary facilities (i.e. street barriers) and security to protect property of the Eligible Utility Provider with respect to Category Two activities protecting the Eligible Utility Provider's or third parties property
8. Meals and Lodging – includes the cost of meals and lodging for employees of Eligibility Utility Providers or third party contractors of Eligible Utility Provider related to the permanent restoration of utility services and infrastructure improvements in the South of Canal Zone.
9. Miscellaneous – includes other cost categories and costs that are consistent with the spirit of the Program, as determined by ESDC, shall be deemed to be Category Two Eligible Costs.<sup>2</sup>

Notwithstanding anything herein to the contrary, any expenditures by Eligible Utility Providers that result in an increase in consumer rates shall not be considered a Category Two Eligible Cost.

Category Two Eligible Costs shall not include losses suffered by the Eligible Utility Provider as a result of the disruption of its businesses, including lost profits; the cost of any judgments, claims or settlements (or attorney fees or other costs related thereto) related to the events of September 11, 2001; business as usual expenditures of the Eligible Utility Provider (except as specifically indicated herein); or any costs that are deemed by ESDC, acting in its reasonable judgement, to be excessive, unnecessary or inconsistent with the purposes of this Program and any costs that have been or will be reimbursed or recovered from local, state, federal rate setting provisions, surcharges, adjustments clauses, etc..

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<sup>2</sup> Category Two Costs may include costs incurred by affiliates of Eligible Utility Providers provided that such costs are consistent with the foregoing, even if such affiliate is regulated by an entity other than the New York State Public Service Commission, Federal Energy Regulatory Commission or Federal Communications Commission.

After receipt of completed applications for Category Two Program Assistance from all Eligible Utility Providers, ESDC, with the assistance of DPS may prepare an amended list of Category Two Eligible Costs for purposes of computing the final grant amounts.

Eligible Utility Providers will be required, within the application, to certify to the truth and accuracy for all claims of Category Two Eligible Costs. Any inaccurate and fraudulent claims will be ineligible claims will be ineligible for reimbursement from this program.

### **Unreimbursed Costs**

To be eligible for assistance under this Program, Eligible Utility Providers must diligently pursue recovery of Category Two Eligible Costs under all applicable insurance policies and any claims that it might have from third parties including any federal or state tax credits that might be available. To the extent an Eligible Utility Provider decides to forego recovery, settle claims for less than fair market value, or generally not pursue recovery of Category Two Eligible Costs, then such cost shall not be deemed a Category Two Eligible Cost.

### **New York State Department of Public Service**

The New York State Department of Public Service has general responsibility for the regulation of utility providers within the State of New York. DPS may enter into an agreement with ESDC to assist in the administration of the Program. It is expected that current employees of DPS, and/or former employees of DPS that have been retained by ESDC, will provide technical advice to ESDC, including the evaluation of initial claims for Category Two Eligible Costs made by the Eligible Utility Providers, the reasonable verification that claimed costs meet eligibility criteria and final accounting of Category Two Eligible Costs. The DPS or ESDC auditors may, as necessary and as agreed to with ESDC, perform field investigations of the physical assets that constitute Category Two Eligible Costs, shall audit the applicable books and records of the Eligible Utility Providers, shall assist ESDC in evaluating any appeals of decisions made by ESDC and shall generally interface, on behalf of ESDC, with the Eligible Utility Providers. The DPS, ESDC, NYCEDC, and LMDC as applicable, shall be eligible to seek reimbursement for administrative costs incurred hereunder.

### **Application**

Eligible Utility Providers must file a complete application for Category Two Program assistance. A completed application includes (i) a completely filled out and signed application form provided by ESDC; and (ii) complete and specific documentation of Category Two Eligible Costs must either be filed or made available at applicants main office (or elsewhere as approved by ESDC); and (iii) status report of all applicable insurance claims and any other third party claims; and (iv) the number of residential and non-residential customers that lost service as a result of the attacks on September 11, 2001 (v) such other information as ESDC may require.

## **Application Submissions**

Applications for Category Two of the Program will be accepted by ESDC through December 31, 2004 for Category Two eligible costs. Applicants are encouraged to submit applications for claims as early as possible in the process. Eligible Utility Providers may amend and supplement their applications through March 31, 2005.

In the event that an Eligible Utility Provider has insurance or other claims for recovery of Category Two Eligible Costs outstanding, it may apply to ESDC prior to December 31, 2004, to reserve Program funds for such Category Two Eligible Costs, pending resolution of such claims.

ESDC in consultation with LMDC may extend the deadlines set forth herein.

Eligible Businesses that are interested in receiving an application should contact the World Trade Center Utility Restoration and Infrastructure Rebuilding Program, c/o Empire State Development, Division of Policy and Research, 30 South Pearl Street, Albany, New York 12245.

## **Processing**

ESDC will use best efforts to evaluate and process all applications in a timely fashion in order that ESDC may make initial grant payments to Eligible Utility Providers within thirty business days of receipt of an application that is determined to be complete and acceptable to ESDC. Final grant payments will be made only upon completion of the audit and verification process described herein. All payments will be made by wire transfer and shall be made payable to the business named in the application. Applicants deemed to be ineligible for assistance will be notified in writing.

All grants disbursed by ESDC to recipients will be reported by ESDC to the Internal Revenue Services. ESDC shall mail a Form 1099-G to the grant recipient, at the address provided in the application.

## **Appeal Process**

If an applicant has submitted an application for assistance under the Program and believes that its application was unfairly denied, in whole or in part, it may appeal such decision within twenty days of receipt of written notification that its application has been denied, or upon receipt of the disbursement of the grant, as applicable. Such appeal must be made in writing to ESDC and include such information as the applicant would like to be considered. A three member ESDC appeal committee, consisting of the Director of Policy and Research, General Counsel and Chief Financial Officer, or their designees, will consider all appeals. All decisions by the appeal committee shall be final. The appeal committee will be the sole arbiter in interpreting the intent and implementation of the Program and these Guidelines.

To the extent an application meets the technical requirements of the Program, as set forth in these Guidelines, but is inconsistent with the goals and the spirit of the Program, then the appeal committee shall have the discretion to reject such application.

### **Maintenance of Records & Audit and Control**

Each Eligible Utility Provider is obligated to maintain books and records that relate to the Grant for a minimum of three years from the application deadline (i.e. through March 31, 2008) (the "Audit Period"). At the request of ESDC, grant recipients shall provide at any time during the Audit Period, additional information that ESDC or DPS may reasonably request. ESDC, DPS, LMDC and HUD or their designees may audit grant recipients on a random or targeted basis for the Audit Period. ESDC reserves the right to contact federal, state and local governmental agencies to confirm information included in the application or information provided in connection therewith or thereafter.

### **Non-Discrimination**

Eligible Utility Providers must agree not to discriminate based on race, creed, color, national origin, sex, age or with respect to any otherwise qualified handicapped person, to be eligible for assistance under the Program and to comply with the applicable requirements under Title VI of the Civil Rights Act of 1964, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975 the Rehabilitation Act of 1973, and all implementing regulations.

### **Federal Requirements**

Due to HUD funding of the Program, additional federal requirements may apply to Eligible Utility Providers that receive grants hereunder. Federal requirement may be applicable under the National Environmental Protection Act, the Uniform Relocation Assistance and Real Acquisitions Policies Act, the Davis-Bacon Act, as well as other federal requirements that are applicable as a condition of the receipt of HUD funds.

### **Disclosure of Information**

Except as required under law, ESDC will endeavor to maintain the confidentiality of proprietary information submitted as part of the application. Notwithstanding the foregoing, such information may be made available to ESDC, DPS and LMDC staff and designated individuals that are processing the application and to federal, state or local officials and to auditors evaluating the Program. ESDC may use the applicant's name, address and grant amount for promotional materials.



## **Availability of Funds**

The making of any Program grants is explicitly subject to the Program approval and the allocation of Program funds by HUD and the receipt of Funds by ESDC from LMDC.

## **General Cooperation**

Eligible Utility Providers will agree to cooperate with ESDC, DPS, LMDC and HUD with respect to current and future obligations under the Program, including the provision of supplemental information that may be required by HUD as required under the Program.

## **Amendments to Guidelines**

ESDC may amend these guidelines from time to time, in consultation with LMDC. The purpose of these guidelines is to establish general parameters only – with specific criteria based on accounting principles applicable to utilities, applied in a manner that is consistent with the intent of the Program.

## **Additional Information**

The application form and instructions, these Guidelines, any amendments to these Guidelines and additional information about the Program can be obtained by contacting:

Dennis Graham (518-292-5272; [dgraham@empire.state.ny.us](mailto:dgraham@empire.state.ny.us))  
Michael Santarcangelo (518-292-5275; [msantarcangelo@empire.state.ny.us](mailto:msantarcangelo@empire.state.ny.us))  
Empire State Development Corporation  
Division of Policy and Research  
30 South Pearl Street  
Albany, New York 12245.