

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY**

LEE BORDELEAU, et al.

Plaintiffs,

-against-

THE STATE OF NEW YORK, et al.

Defendants.

Index No. 6582-08

AFFIDAVIT OF
ALLAN R. HOEFT

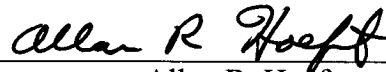
ALLAN R. HOEFT, being duly sworn, deposes and says:

1. I have been employed by International Business Machines Corporation (“IBM”) for 29 years. I currently hold the title of Executive Project Manager and am responsible for coordinating IBM’s efforts to obtain an incentive award relating to IBM’s plans to design and build an environmentally friendly data center. I state the following based on personal knowledge.
2. I submit this affidavit in support of IBM’s opposition to the Order to Show Cause dated August 4, 2008.
3. IBM submitted an application (with assistance from United Technologies Corp.) for an award in response to a Program Opportunity Notice (No. 1178) from the New York State Energy Research and Development Authority (“NYSERDA”). IBM was informed on April 22, 2008 that NYSERDA had approved IBM’s proposal for the \$2 million incentive award, which relates to IBM’s efforts to design and build a data center powered by environmentally friendly technology. IBM proposes that the center would use microturbine-based combined heating, cooling and

power technology that would serve as the primary energy supply for the power and cooling of the high density server section of the data center and as the backup power for the critical data center systems.

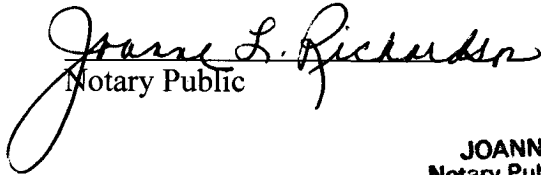
4. The award has not been finalized, and IBM has not received any funds relating to this incentive award.

5. The incentive award from NYSERDA, if IBM receives it, will aid in the demonstration of environmentally friendly power generation technologies.



Allan R. Hoelt

Sworn to before me
the 2nd day of September, 2008.



Notary Public

JOANNE L. RICHARDSON
Notary Public, State of New York
Qualified in Dutchess County
Commission Expires 4/13/2011