

**RESOLUTION AUTHORIZING PUBLIC HEARING AND PILOT
DEVIATION PROCESS IN CONNECTION WITH A REQUEST FOR
ADDITIONAL FINANCIAL ASSISTANCE FROM EMPIRE
GENERATING CO, LLC**

A regular meeting of Rensselaer County Industrial Development Agency (the "Agency") was convened in public session in the 3rd Floor Conference Room at the Quackenbush Building located at 333 Broadway in the City of Troy, Rensselaer County, New York on March 14, 2019 at 4:00 o'clock p.m., local time.

The meeting was called to order by the (Vice) Chairman of the Agency and, upon roll being called, the following members of the Agency were:

PRESENT:

Michael Della Rocco	Vice Chairman
Cynthia A. Henninger	Secretary/Treasurer
Ronald Bounds	Assistant Secretary/Treasurer
James Church	Member
Douglas Baldrey	Member

ABSENT:

John H. Clinton, Jr.	Chairman
Renee Powell	Member

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Robin LaBrake	Assistant
Melissa C. Bennett, Esq.	Special Counsel

The following resolution was offered by Douglas Baldrey, seconded by Cynthia Henninger, to wit:

Resolution No. 0319-5

**RESOLUTION AUTHORIZING PUBLIC HEARING AND PILOT
DEVIATION PROCESS IN CONNECTION WITH A REQUEST FOR
ADDITIONAL FINANCIAL ASSISTANCE FROM EMPIRE
GENERATING CO, LLC**

WHEREAS, Rensselaer County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 128 of the 1974 Laws of New York, as amended, constituting Section 903-d of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop,

encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, warehousing, research, commercial and industrial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more “projects” (as defined in the Act), or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, on July 13, 2007 (the “Closing”), the Agency granted certain financial assistance to Empire Generating Co, LLC, f/k/a Besicorp-Empire Power Company, LLC (the “Company”) in connection with a project (the “Project”), said Project consisting of the following: (A)(1) the acquisition of an interest in certain parcels of land containing approximately 80 acres located on Riverside Avenue, in the City of Rensselaer, Rensselaer County, New York (the “Land”), (2) the construction on the Land of multiple facilities to contain in the aggregate approximately 350,000 square feet of space that will produce not less than 510 megawatts (nominal) of electricity and 1,300,000,000 lbs. of steam annually (collectively, the “Power Facility”), (3) the construction on the Land of a related treatment plant to contain approximately 145,000 square feet of space (the “Treatment Facility”), (4) the construction of an approximately nine-mile electrical interconnection along the existing Niagara Mohawk electric transmission corridor and right of way in the City of Rensselaer and the Towns of East Greenbush and North Greenbush, Rensselaer County (the “Electrical Interconnection”), (5) the construction of an approximately six-mile natural gas interconnection along Route 9J in the City of Rensselaer and the Towns of East Greenbush and Schodack, Rensselaer County (the “Gas Interconnection”) (the Power Facility, the Treatment Facility, the Electrical Interconnection and the Gas Interconnection hereinafter collectively referred to as the “Facility”) and (6) the acquisition and installation in the Facility of certain machinery and equipment (the “Equipment” and together with the Land and the Facility, the “Project Facility”); (B) the financing of all or a portion of the costs of the foregoing by the issuance of its industrial development revenue bonds in an aggregate principal amount not to exceed \$358,000,000 (the “Bonds”) in one or more issues or series to pay a portion of the cost of undertaking the Project, together with necessary incidental costs in connection therewith; (C) the granting of certain other “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including exemption from certain sales taxes, deed transfer taxes, mortgage recording taxes and real property taxes (collectively with the Bonds, the “Financial Assistance”); and (D) the lease of the Project Facility to the Company pursuant to a lease to agency dated as of July 1, 2007 (the “Lease Agreement”) by and between the Agency and the Company; and

WHEREAS, in connection with the Project, the Agency and the Company entered into a payment in lieu of tax agreement dated as of July 1, 2007 (the “Original PILOT Agreement”), as amended by a First Amendment to Payment in Lieu of Tax Agreement dated as of November 1, 2007 (the “Amended PILOT Agreement”), amending certain terms of the Original PILOT Agreement; and

WHEREAS, on November 7, 2007 (the "Second Closing"), certain of the Basic Documents (as defined in the Lease Agreement) were modified to, among other things, amend the Company's name; and

WHEREAS, on February 25, 2009 (the "Third Closing"), certain of the Basic Documents (as defined in the Lease Agreement) were amended and restated were modified, including the Original PILOT Agreement (as amended and restated, the "Amended and Restated PILOT Agreement"); and

WHEREAS, pursuant to correspondence dated March 12, 2019 (the "Request"), the Company has requested that the Agency approve additional financial assistance to the Company in the form of additional real property tax exemption benefits (the "Additional Financial Assistance"), as more specifically set forth in Exhibit A attached hereto and as outlined by the Executive Director of the Agency at this meeting; and

WHEREAS, if the Agency were to approve the grant to the Additional Financial Assistance to the Company it would be a deviation from the Agency's uniform tax exemption policy the "UTEP"); and

WHEREAS, pursuant to Section 874(4) of the Act, prior to taking final action on such request for a deviation from the Agency's UTEP, the Agency must give the chief executive officers of the County and each city, town, village and school district in which the Project Facility is located (collectively, the "Affected Tax Jurisdictions") prior written notice of the proposed deviation from the Agency's UTEP and the reasons therefor; and

WHEREAS, pursuant to Section 856(15) of the Act, unless otherwise agreed by the affected tax jurisdictions, payments in lieu of taxes must be allocated among the affected tax jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each affected tax jurisdiction had the Project Facility not been tax exempt due to the status of the Agency; and

WHEREAS, pursuant to Section 859-a of the Act, prior to the Agency providing any financial assistance of more than \$100,000 to any project, the Agency, among other things, must hold a public hearing with respect said project; and

WHEREAS, pursuant to Section 859-a of the Act, prior to the Agency providing any financial assistance of more than \$100,000 to any project, the Agency, among other things, must hold a public hearing with respect said project; and

WHEREAS, the Additional Financial Assistance will cause the Agency to provide additional financial assistance in excess of \$100,000, therefore pursuant to Section 859-a of the Act, prior to the Agency approving the Additional Financial Assistance, the Agency, among other things, must hold a public hearing with respect the Project and the Request; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), the Agency must determine

the potential environmental significance of the grant to the Company of the Additional Financial Assistance and the execution of documents in connection therewith (the "Transaction");

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF RENSSELAER COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. Pursuant to SEQRA, the Agency hereby finds and determines that:

(A) Pursuant to Section 617.5(c)(23) of the Regulations, the Transaction is a "Type II action" (as said quoted term is defined in the Regulations); and

(B) Therefore, the Agency hereby determines that no environmental impact statement or any other determination or procedure is required under the Regulations with respect to the Transaction.

Section 2. The law firm of Barclay Damon LLP is hereby appointed Special Counsel to the Agency with respect to all matters in connection with the Transaction. Special Counsel for the Agency is hereby authorized, at the expense of the Company, to work with the Company, counsel to the Company and others to prepare, for submission to the Agency, all documents necessary to effect the transactions contemplated by this Resolution.

Section 3. The Agency hereby authorizes the Executive Director of the Agency, after consultation with the members of the Agency and Agency Counsel, (A) to establish the time, date and place for a public hearing of the Agency to hear all persons interested in the Project and the Additional Financial Assistance being contemplated by the Agency, said public hearing to be held in the city, town or village where the Project Facility is or is to be located; (B) to cause notice of such public hearing to be given to the public by publishing a notice of such hearing in a newspaper of general circulation to available to the residents of the governmental units where the Project Facility is or is to be located, such notice to comply with the requirements of Section 859-a of the Act; (C) to cause notice of said public hearing to be given to the chief executive officer of the county and each city, town, village and school district in which the Project Facility is or is to be located to comply with the requirements of Section 859-a of the Act; (D) to conduct such public hearing; and (E) to cause a report of said public hearing fairly summarizing the views presented at said public hearing to be promptly prepared and cause copies of said report to be made available to the members of the Agency.

Section 4. The Agency hereby authorizes the Executive Director of the Agency to send a written notice to the chief executive officers of each of the Affected Tax Jurisdictions (A) informing them that the Agency is considering a proposed amendment to the Amended and Restated PILOT Agreement, which amendment, as outlined in Exhibit A and by the Executive Director of the Agency at this meeting, deviates from its UTEP with respect to the Project and the reasons therefor and (B) soliciting any comments that such Affected Tax Jurisdictions may have with respect to said proposed deviation.

Section 5. The Chairman, Vice Chairman and/or Executive Director of the Agency is hereby authorized and directed to distribute copies of this Resolution to the Company and to

do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 6. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

John H. Clinton, Jr.	ABSENT	
Michael Della Rocco	VOTING	AYE
Cynthia A. Henninger	VOTING	AYE
Ronald Bounds	VOTING	AYE
Douglas Baldrey	VOTING	AYE
James Church	VOTING	AYE
Renee Powell	ABSENT	

The foregoing Resolution was thereupon declared duly adopted.


STATE OF NEW YORK)
) SS.:
COUNTY OF RENSSELAER)

I, the undersigned (Assistant) Secretary of Rensselaer County Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on March 14, 2019 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution contained therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 14th day of March, 2019.



Secretary

(SEAL)

Exhibit A

Amended PILOT Request

Year		Current PILOT	Proposed PILOT
2019	10	\$1,750,000	\$1,000,000
2020	11	\$1,750,000	\$1,000,000
2021	12	\$2,000,000	\$1,100,000
2022	13	\$2,000,000	\$1,100,000
2023	14	\$2,000,000	\$1,100,000
2024	15	\$2,000,000	\$1,100,000
2025	16	\$2,000,000	\$1,100,000
2026	17	\$2,300,000	\$1,300,000
2027	18	\$2,300,000	\$1,300,000
2028	19	\$2,300,000	\$1,300,000
2029	20	\$2,300,000	\$1,300,000