

**RESOLUTION APPROVING EXECUTION OF STIPULATION AGREEMENT
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 December 12, 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:

John H. Clinton, Jr.	Chairman
Michael Della Rocco	Vice Chairman
Cynthia A. Henninger	Secretary/Treasurer
Ronald Bounds	Assistant Secretary/Treasurer
Douglas Baldrey	Member
Renee Powell	Member

ABSENT:

James Church	Member
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AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Robert L. Pasinella, Jr.	Executive Director
Robin LaBrake	Assistant
John E. Sweeney, Esq.	Special Agency Counsel
Peter R. Kehoe, Esq.	Special Agency Counsel
M. Cornelia Cahill, Esq.	Special Counsel

The following resolution was offered by Renee Powell, seconded by Douglas Baldrey, to wit:

Resolution No. 1219-06

**RESOLUTION APPROVING EXECUTION OF A STIPULATION
AGREEMENT WITH RESPECT TO A CERTAIN PROJECT WITH
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, including the Original PILOT Agreement (as amended and restated, the “Amended and Restated PILOT Agreement”); and

WHEREAS, on May 19, 2019 the Company and certain of its affiliates filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Proceeding”); and

WHEREAS, on July 3, 2019 the Agency filed a proof of claim (the “Proof of Claim”), in which the Agency asserted a secured claim in the amount of \$1,750,000 due in January 2020 under the Amended and Restated PILOT Agreement; and

WHEREAS, as part of the Bankruptcy Proceeding, a stipulation resolving the Proof of Claim has been presented to the Agency for execution by the Agency and the Company (as reorganized pursuant to the Bankruptcy Proceeding) in the form attached hereto as Exhibit A (the “Stipulation Agreement”);

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

Section 1. The Agency hereby agrees and consents to the execution and delivery of the Stipulation Agreement, and any other documents necessary to effectuate and carry out the intent of this Resolution, subject to review by the Chairman (or Vice Chairman) and upon approval of the Agency’s special counsel.

Section 2. (A) The Chairman (or Vice Chairman) of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Stipulation Agreement and such other documents necessary to effectuate and carry out the intent of this Resolution, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same.

(B) The Chairman (or Vice Chairman) of the Agency is hereby further authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency.

Section 3. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required in order to effectuate the Stipulation Agreement, and to execute and deliver all such additional certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and the provisions of the Stipulation Agreement.

Section 4. 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.	VOTING	AYE
Michael Della Rocco	VOTING	AYE
Cynthia A. Henninger	VOTING	AYE
Ronald Bounds	VOTING	AYE
Douglas Baldrey	VOTING	AYE
James Church	VOTING	ABSENT
Renee Powell	VOTING	AYE

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 December 12, 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 12th day of December, 2019.



(Assistant) Secretary

(SEAL)

Exhibit A

Stipulation Agreement

-See Attached-

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Counsel for the Reorganized Debtors

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
EMPIRE GENERATING CO, LLC, <i>et al.</i> , ¹)	Case No. 19-23007 (RDD)
Reorganized Debtors.)	(Jointly Administered)

**STIPULATION RESOLVING PROOF OF CLAIM NUMBER 14
FILED BY RENNELAER COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

This stipulation (the “Stipulation”) is entered as of November __, 2019 by and between Reorganized Empire Generating Co, LLC (“Empire Generating”) and Rensselaer County Industrial Development Agency (the “Claimant”; together with Empire Generating, the “Parties”).

RECITALS

A. On May 19, 2019 (the “Petition Date”), Empire Generating and certain of its affiliates (collectively with Empire Generating, the “Debtors”) filed voluntary petitions for relief under chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York (the “Court”) commencing the above-captioned cases (the “Chapter 11 Cases”).

¹ The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Reorganized Debtor’s tax identification number, if applicable, are: Empire Generating Co, LLC [3821], Empire Gen Holdco, LLC [3820], Empire Gen Holdings, LLC [4849], and TTK Empire Power, LLC [none].

B. Empire Generating and the Claimant are parties to that certain (i) Amended and Restated Payment in Lieu of Taxes Agreement, dated as of February 1, 2009 (the “PILOT Agreement”) and (ii) Amended and Restated Payment in Lieu of Taxes (PILOT) Mortgage and Security Agreement dated as of February 1, 2009 (the “PILOT Mortgage”; together with the PILOT Agreement, the “Agreements”).

C. On May 31, 2019, the Court entered an order [Dkt. No. 72] establishing deadlines for creditors to file proofs of claim in the Chapter 11 Cases.

D. On July 3, 2019, the Claimant filed a proof of claim in the Chapter 11 Case of Empire Generating, designated by the court-appointed claims agent as Claim No. 14 (the “Proof of Claim”), through which the Claimant asserts a Secured Claim in the amount of \$1,750,000 due under the PILOT Agreement in January 2020.

E. On September 18, 2019, the Court entered an order [Dkt. No. 298] (the “Sale Order”) which, among other things, authorized Empire Generating’s assumption of certain executory contracts and unexpired leases. *See* Sale Order ¶ 25.

F. In accordance with the Sale Order, Empire Generating assumed the Agreements effective as of the Closing Date (as defined in the Sale Order), which occurred on November 4, 2019. *See Notice of Assumption or Assumption and Assignment of Assigned Contracts* [Dkt. No. 108].

G. On September 23, 2019, the Court entered an order [Dkt. No. 304] confirming the *Debtors’ Modified Amended Joint Chapter 11 Plan* dated September 11, 2019 [Dkt. No. 304-1] (as amended, modified or supplemented from time to time, the “Plan”).²

H. The Effective Date of the Plan occurred on November 4, 2019.

I. Pursuant section 7.2 of the Plan, the Reorganized Debtors are authorized to settle or compromise the Proof of Claim without any further notice to or action, order, or approval by the Court.

J. The Parties desire to resolve the Proof of Claim subject to the terms and conditions set forth herein.

STIPULATION

² Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Plan.

NOW, THEREFORE, in consideration of the facts and events described in the above recitals and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereby agree as follows:

1. The PILOT Mortgage is deemed reinstated and the PILOT Agreement is deemed assumed by Reorganized Empire Generating in accordance with the Sale Order and section 3.2(d) of the Plan.

2. The Proof of Claim is deemed fully satisfied by the reinstatement of the PILOT Mortgage and assumption of the PILOT Agreement.

3. Empire Generating shall make all required payments when due under the PILOT Agreement. Claimant shall send invoices for payment to the following address, or such other address as identified in writing by Empire Generating:

Empire Generating Co, LLC
c/o Chet Szymanski (Plant Manager)
75 Riverside Avenue
PO Box 350
Rensselaer, NY 12144
Chester.Szymanski@naes.com
Office: (518) 694-8205 ext 302
Fax: (518) 694-8357

4. Each of the Parties has had a full opportunity to participate in the drafting of this Stipulation and, accordingly, any claimed ambiguity shall be construed neither for nor against any of the Parties.

5. Each of the Parties agrees to bear its own costs and expenses, including without limitation attorneys' fees, incurred in preparing and negotiating this Stipulation.

6. Each person who executes this Stipulation on behalf of a Party represents that he or she is duly authorized to execute this Stipulation on behalf of such Party.

7. The provisions contained in this Stipulation constitute the entire agreement among the Parties with regard to the subject matter of this Stipulation, and all prior understandings or agreements, if any, are merged into this Stipulation.

8. This Stipulation may not be modified, amended, or vacated other than by a signed writing executed by the Parties.

9. Except to the extent the Bankruptcy Code or Bankruptcy Rules apply, this Stipulation shall be construed and interpreted in accordance with the laws of the State of New York without regarding to the choice of law principles of the State of New York which could otherwise require the application of the law of another jurisdiction.

10. The Stipulation shall inure to the benefit of and shall be binding on the Parties and their respective successors and assigns.

11. This Stipulation may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Stipulation delivered by e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Stipulation.

IN WITNESS WHEREOF, the Parties have caused this Stipulation to be executed as of the date listed above.

EMPIRE GENERATING CO, LLC

**RENSSELAER COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

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