

**PUBLIC HEARING AND PILOT DEVIATION PROCESS RESOLUTION FOR
AMENDED 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, remotely by conference call or similar service pursuant to the New York State Executive Order 202.1 (as amended and extended), on February 11, 2021 at 4:00 o’clock p.m., local time.

The meeting was called to order by the acting 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:

None

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Robert L. Pasinella, Jr.	Executive Director
Robin LaBrake	Assistant to the Director
John E. Sweeney, Esq.	Agency Counsel
Peter R. Kehoe, Esq.	Special Agency Counsel
Melissa C. Bennett, Esq.	Special Counsel

The following resolution was offered by Ronald Bounds, seconded by Cynthia Henninger, to wit:

Resolution No. 0221-6

RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR OF THE
RENSSELAER COUNTY INDUSTRIAL DEVELOPMENT AGENCY TO
HOLD A PUBLIC HEARING AND TO COORDINATE THE DEVIATION
PROCESS IN CONNECTION WITH AN AMENDED 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 “First Amendment to 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 which was amended by the First Amendment to PILOT Agreement (as amended and restated, the “Amended and Restated PILOT Agreement”); and

WHEREAS, pursuant to correspondence dated March 12, 2019, the Company requested that the Agency approve additional financial assistance to the Company in the form of additional real property tax exemption benefits (the “2019 Request”), as outlined at the March 14, 2019 meeting of the Agency; and

WHEREAS, at the March 14, 2019 meeting of the Agency, the Agency adopted a resolution authorizing a public hearing and the PILOT deviation process with respect to the 2019 Request; and

WHEREAS, the members of the Agency took no further action with respect to the requested 2109 Request; and

WHEREAS, pursuant to correspondence dated February 2, 2021, the Company requested that the Agency approve additional financial assistance to the Company in the form of additional real property tax exemption benefits (the “2021 Additional Financial Assistance”), as more specifically set forth in Exhibit A, and enter into a first amendment to the Amended and Restated PILOT Agreement (the “Proposed First Amendment to Amended and Restated PILOT Agreement”), a form of which was distributed to the members; and

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

WHEREAS, if the Agency were to approve the grant of the 2021 Additional Financial Assistance to the Company and the execution and delivery of the Proposed First Amendment to Amended and Restated PILOT Agreement, the Agency will be providing additional financial assistance in excess of \$100,000, therefore, pursuant to Section 859-a of the Act, prior to the Agency approving the 2021 Additional Financial Assistance and the execution and delivery of the Proposed First Amendment to Amended and Restated PILOT Agreement, the Agency, among other things, is required to hold a public hearing; and

WHEREAS, approval by the Agency of the grant of the 2021 Additional Financial Assistance to the Company and the execution and delivery of the Proposed First Amendment to Amended and Restated PILOT Agreement, 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, the Agency desires to comply with the public hearing and notice requirements contained in Section 859-a of the Act and the procedure and notice requirements for a deviation from the UTEP with respect to the grant of the 2021 Additional Financial Assistance and the Proposed First Amendment to Amended and Restated PILOT Agreement contained in Section 874 of the Act and the UTEP; 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 Amended Additional Financial Assistance and the execution and delivery of the Proposed First Amendment to Amended and Restated PILOT Agreement (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 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, place and date for a public hearing of the Agency to hear all persons interested in the Project and the 2021 Additional Financial Assistance being contemplated by the Agency, said public hearing to be held, as appropriate in the city, town or village where the Project Facility is to be located or remotely by conference call or similar service pursuant to Executive Order 202.1 (as amended and extended); (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 be 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 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 3. The Agency hereby further authorizes the Executive Director of the Agency to (A) establish a time, date and place for a meeting of the Agency to consider the approval by the Members of the Agency of the 2021 Additional Financial Assistance and the execution and delivery of the Proposed First Amendment to Amended and Restated PILOT Agreement (if applicable, said meeting to be held remotely by conference call or similar service pursuant to Executive Order 202.1 (as amended and extended)); and (B) cause notice of said meeting 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 located, such notice or notices to comply with the requirements of Section 874 of the Act and the UTEP.

Section 4. 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 5. 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
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 February 11, 2021 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"), as modified by New York State Executive Order 202.1 (as amended and extended), 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 11th day of February, 2021.



Secretary

(SEAL)

Exhibit A

2021 Request

Year	Current PILOT	2021 Request
12	\$2,000,000	\$650,000
13	\$2,000,000	\$700,000
14	\$2,000,000	\$750,000
15	\$2,000,000	\$800,000
16	\$2,000,000	\$850,000
17	\$2,250,000	\$900,000
18	\$2,250,000	\$950,000
19	\$2,250,000	\$1,000,000
20	\$2,250,000	\$1,050,000

The Proposed First Amendment to Amended and Restated PILOT Agreement includes a provision that if the conditions set forth in the table below are met, the Company shall provide an additional Payment in Lieu of Taxes each year beginning with the Payment in Lieu of Taxes due in January, 2021 (Year 12) and continuing for each subsequent Payment in Lieu of Taxes owed for the duration of the Payment in Lieu of Taxes Agreement. Such payment shall be dependent upon the value of the previous years' average NYISO capacity price for Rest of State (i.e. the "NYISO Capacity Payment"). For purposes of clarity, the payment amount may fluctuate each year, depending on the value of the capacity payment in the prior year, however, every such year where the capacity payment meets or exceeds the values set forth below, an additional payment will be made in the amount set forth below.

Specifically, by January 15th of each year the Company will provide evidence of the NYISO Capacity Payment, which may be in the form of the ICAP Market Report, indicating the capacity prices (including strip, monthly and spot) applicable to the Company, or a similar form, and if this value for the prior year meets or exceeds the amounts listed in Column A, the Payment in Lieu of Taxes for that year shall be increased by the amount in Column B (the "Additional Payment in Lieu of Taxes"):

COLUMN A CAPACITY PAYMENT PER KW-YR	COLUMN B PILOT INCREASE
\$25.00	\$400,000
\$30.00	\$650,000
\$35.00	\$900,000
\$40.00	\$1,150,000
\$45.00	\$1,400,000
\$50.00	\$1,650,000