

**RESOLUTION APPROVING MODIFICATION OF PILOT AGREEMENT FOR  
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 March 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

ABSENT:

Renee Powell	Member
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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 Douglas Baldrey, seconded by Ronald Bounds, to wit:

Resolution No. 0321-11

**RESOLUTION APPROVING A MODIFICATION TO PILOT  
AGREEMENT FOR 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 2019 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 (the “2021 Request”), and enter into a first amendment to the Amended and Restated PILOT Agreement (the “Proposed First Amendment to Amended and Restated PILOT Agreement”); and

WHEREAS, the Agency’s Uniform Tax Exemption Policy (the “Policy”) provides a standardized method for the determination of payments in lieu of taxes for a facility similar to the Project Facility; and

WHEREAS, the 2021 Request and the Proposed First Amendment to Amended and Restated PILOT Agreement include payments in lieu of taxes that deviate from the Policy; and

WHEREAS, at a meeting of the members duly held on February 11, 2021, the Agency duly adopted a resolution (the “2021 PILOT Deviation and Public Hearing Resolution”) authorizing the public hearing and PILOT deviation process with respect to the 2021 Additional Financial Assistance; and

WHEREAS, pursuant to the 2021 PILOT Deviation and Public Hearing Resolution, the members of the Agency authorized the Executive Director of the Agency to send a notice (the “2021 Pilot Deviation Letter”) to the chief executive officers of the “Affected Tax Jurisdictions” (as defined in the Act) pursuant to Section 874(4) of the Act, informing said individuals that the Agency had received the 2021 Request and that the members of the Agency would consider said 2021 Request and the 2021 Additional Financial Assistance at a meeting of the members of the Agency scheduled to be held on March 11, 2021; and

WHEREAS, pursuant to the authorization contained in the 2021 PILOT Deviation and Public Hearing Resolution, the Executive Director of the Agency caused notice of a public hearing of the Agency (the “2021 Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on February 26, 2021 to the chief executive officers of the county and of each city, town, village and school district in which the Project Facility is located, caused notice of the 2021 Public Hearing to be posted on February 26, 2021 on the Agency’s website, (C) caused notice of the 2021 Public Hearing to be published on February 28, 2021 in The Record, a newspaper of general circulation available to the residents of the City of Troy, Rensselaer County, New York, (D) conducted the 2021 Public Hearing on March 11, 2021 at 10:00 a.m., by telephone conference pursuant to Executive Order 202.1 (as amended and extended), and (E) prepared a report of the 2021 Public Hearing (“2021 Public Hearing Report”) fairly summarizing the views presented at such 2021 Public Hearing and caused copies of said 2021 Public Hearing Report to be made available to the members of the Agency; and

WHEREAS, prior to the date hereof, the Agency responded to all communications and correspondence received from the Affected Tax Jurisdictions regarding the proposed deviation from the Policy; and

WHEREAS, the Executive Director of the Agency has been in communication with the Company and each of the Affected Taxing Jurisdictions and their respective counsels; and

WHEREAS, the Company has amended the 2021 Request and proposed a modified schedule of payment in lieu of taxes, as more specifically set forth in Exhibit B (the “2021 Modified PILOT Terms”) (the 2021 Additional Financial Assistance as modified to include the 2021 Modified PILOT Terms, the “2021 Modified Financial Assistance”); and

WHEREAS, the 2021 Modified PILOT Terms were shared with the Affected Tax Jurisdictions in advance of the 2021 Public Hearing and this meeting; and

WHEREAS, the Agency allowed representatives from the Affected Tax Jurisdictions to address the Agency regarding such proposed deviation; 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, in order to consummate the granting of the 2021 Additional Financial Assistance, the Agency proposes to enter into: (A) a first amendment to amended and restated payment in lieu of tax agreement (the “First Amendment to Amended and Restated PILOT Agreement”) by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility; (B) a uniform project benefits agreement (the “Uniform Project Benefits Agreement”) by and between the Agency and the Company regarding the granting of the 2021 Additional Financial Assistance and the potential recapture of such assistance and that complies with the requirements of Section 859-

a(6) of the Act; and (C) various certificates relating to the 2021 Additional Financial Assistance (the “2021 Transaction Documents”); and

WHEREAS, the Agency will file with the assessor and mail to the chief executive officers of each “affected tax jurisdiction” (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form RP-412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (a “Real Property Tax Exemption Form”) relating to the 2021 Additional Financial Assistance;

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

Section 1. The granting of the 2021 Modified Additional Financial Assistance by the Agency with respect to the Project will promote and maintain the job opportunities, general prosperity and economic welfare of the citizens of Rensselaer County, New York and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (A) enter into the First Amendment to Amended and Restated Payment in Lieu of Tax Agreement; (B) enter into the Uniform Project Benefits Agreement; and (C) grant to the Company the 2021 Modified Additional Financial Assistance with respect to the Project.

Section 3. The Agency is hereby authorized to do all things necessary or appropriate for the granting of the 2021 Modified Additional Financial Assistance, and all acts heretofore taken by the Agency with respect thereto are hereby approved, ratified and confirmed.

Section 4. The Chairman (or Vice Chairman) of the Agency, with the assistance of Agency Counsel and/or Special Counsel, is authorized to negotiate and approve the form and substance of the 2021 Transaction Documents.

Section 5. (A) The Chairman (or Vice Chairman) of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the 2021 Transaction Documents, 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, all in the forms thereof as the Chairman (or Vice Chairman) shall approve, the execution thereof by the Chairman (or Vice Chairman) to constitute conclusive evidence of such approval.

(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 (as defined in and pursuant to the Lease Agreement).

Section 6. 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 or provided for by the provisions of the 2021 Transaction Documents, 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 to cause compliance by the Agency with all of the terms, covenants and provisions of the 2021 Transaction Documents binding upon the Agency.

Section 7. 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	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 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 11<sup>th</sup> day of March, 2021.

  
\_\_\_\_\_  
Secretary

(SEAL)

Exhibit A

Original 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 15<sup>th</sup> 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

Exhibit B

Modified 2021 Request

Year	Current PILOT	Modified 2021 Request
12	\$2,000,000	\$1,100,000
13	\$2,000,000	\$1,000,000
14	\$2,000,000	\$900,000
15	\$2,000,000	\$900,000
16	\$2,000,000	\$925,000
17	\$2,250,000	\$950,000
18	\$2,250,000	\$1,000,000
19	\$2,250,000	\$1,050,000
20	\$2,250,000	\$1,100,000

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 15<sup>th</sup> 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