

ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY

APPLICATION FOR FINANCIAL ASSISTANCE

Danskammer Energy LLC
(Applicant Name)

Robert T. Armistead
Chairman

Orange County Business Accelerator
4 Crotty Lane, Suite 100
New Windsor, NY 12553

Phone: 845-234-4192 Fax: 845-220-2228

www.ocnyida.com
business@ocnyida.com

Updated April 2014

ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY

APPLICATION FOR FINANCIAL ASSISTANCE

I. APPLICANT INFORMATION

Company Name: Danskammer Energy LLC
Mailing Address: 994 River Road, Newburgh NY 12550
Phone No.: 713-447-8637
Fax No.: 832-209-2401
Fed Id. No.: 46-4106403
Contact Person: Larry She

Principal Owners/Officers/Directors (list owners with 15% or more in equity holdings with percentage ownership): **Mercuria Energy America, Inc. (ownership – 98%), designated as the Managing Member. Current officers of Danskammer Energy are the following:**

Larry She, President
Andrew Davis, Vice President
Scott Muecke, Vice President-Controller
Christopher Morran, Treasurer
Mark Greenberg, Secretary
Being member managed, there are no directors at this time.

Corporate Structure (*attach schematic if applicant is a subsidiary or otherwise affiliated with another entity*)

Form of Entity

☐ Corporation

Date of Incorporation: _____
State of Incorporation: _____

☐ Partnership

General _____ or Limited _____
Number of general partners _____
If applicable, number of limited partners _____

Date of formation _____
Jurisdiction of Formation _____

☐ Limited Liability Company/Partnership (number of members **2**)

Date of organization: 11/13/13

State of Organization: Delaware

☐ Sole Proprietorship

If a foreign organization, is the applicant authorized to do business in the State of New York?
Yes.

APPLICANT'S COUNSEL

Name: Mark Greenberg

Address: 5 Greenway Plaza, Suite 810, Houston TX 77046

Phone No.: 832-209-2335

Fax No.: 832-209-2401

II. PROJECT INFORMATION

A) Describe the proposed acquisitions, construction or reconstruction and a description of the costs and expenditures expected. **The Danskammer Power Station is comprised of six generators – 2 emergency diesel generators, and 4 utility sized units. Superstorm Sandy flooded the basement of the 4 utility sized generator units, and the station has been put into mothballed status since. Danskammer Energy intends to repair the damaged components with equipment “in kind”. The repair is isolated to broken piping and valves, electrical switchgear and instrumentation. The estimated cost of the repair is \$12M, \$8M of which is associated with labor related costs.**

B) Furnish a copy of any environmental application presently in process of completion concerning this project, providing name and address of the agency, and copy all pending or completed documentation and determinations. **Documentation for this aspect of the project is substantial and will be provided separately.**

If any of the above persons, or a group of them, owns more than a 50% interest in the company, list all other organizations which are related to the company by virtue of such persons having more than a 50% interest in such organizations. **Please see the attached organization chart. Mercuria Energy America, Inc. is an indirect wholly owned subsidiary of Mercuria Energy Group Limited (“MEG”). MEG is the holding company of an international group operating in a wide spectrum of global energy and commodities markets. The Group’s core activities are in the trading of energy products, including crude oil and refined petroleum products, natural gas (including LNG), power, coal, biodiesel, vegetable oils and carbon emissions. Like all energy traders, Mercuria trades both in physical quantities of energy products as well as in non-physical quantities for hedging purposes, through the trading of derivatives (such as hedges, swaps and futures).**

Is the company related to any other organization by reason of more than 50% common ownership? If so, indicate name of related organization and relationship.

See previous response.

Has the company (or any related corporation or person) made a public offering or private placement of its stock within the last year? If so, please provide offering statement used.
No.

Project Data

1. Project site (land)

(a) Indicate approximate size (in acres or square feet) of project site.

52 acres (+/-)

(b) Are there buildings now on the project site? X Yes No

(c) Indicate the present use of the project site.

Site is currently a Power Plant

(d) Indicate relationship to present user of project.

Current lessee under a Ground Lease Agreement with Helios Power Capital

2. Does the project involve acquisition of an existing building or buildings? If yes, indicate number, size and approximate age of buildings:

Power plant and accessory structures that were built approximately 60 years with Unit 1 built in 1951, Unit 2 built in 1954, Unit 3 built in 1959 and Unit 4 built in 1967.

3. Does the project consist of the construction of a new building or buildings? If yes, indicate number and size of new buildings:

No

4. Does the project consist of additions and/or renovations to existing buildings? If yes, indicate nature of expansion and/or renovation:

No

5. What will the building or buildings to be acquired, constructed or expanded be used for by the company? (Include description of products to be manufactured, assembled or processed, and services to be rendered. . .)

Yes. The facility will continue to be used as a power plant.

. . .including the percentage of building(s) to be used for office space and an estimate of the percentage of the functions to be performed at such office not related to the day-to-day operations of the facilities being financed.)

10% of the building(s) will be used for office space. All space will be used towards the day to day operation of the facilities.

6. If any space in the project is to be leased to third parties, indicate total square footage of the project amount to be leased to each tenant and proposed use by each tenant.

No

7. List principal items or categories of equipment to be acquired as part of the project.

Valves, piping, electrical switchgear, instrumentation, generators, turbines, pumps, etc.

8. Has construction work on this project begun?

Complete the following

(a) site clearance	<u>X</u> Yes	<u> </u> No	<u>100</u> % complete
(b) foundation	<u>X</u> Yes	<u> </u> No	<u>100</u> % complete
(c) footings	<u>X</u> Yes	<u> </u> No	<u>100</u> % complete
(d) steel	<u>X</u> Yes	<u> </u> No	<u>100</u> % complete
(e) masonry work	<u>X</u> Yes	<u> </u> No	<u>100</u> % complete
(f) other (describe below)	<u> </u> Yes	<u> </u> No	<u> </u> % complete

9. Will any of the funds borrowed through the Agency be used for refinancing?
No funds will be borrowed from the Agency for this project.

10. Is a purchaser for the bonds in place? N/A

COST BENEFIT ANALYSIS:

	<u>Costs =</u> <u>Financial Assistance</u>	<u>Benefits =</u> <u>Economic Development</u>
Estimated Sales Tax Exemption	\$ <u> </u>	New Jobs Created <u>40</u>
		Existing Jobs Retained <u>5</u>
Estimated Mortgage Tax Exemption	\$ <u> </u>	Private Funds invested \$12,000,000.00
Estimated Property Tax Abatement	\$ <u> </u>	Other Benefits <u> </u>
		Expected Yearly Payroll \$6,000,000.00
Estimated Interest Savings IRB Issue	\$ <u> </u>	Expected Gross Receipts \$ <u> </u>

B) Project Address: 994 River Road, Newburgh NY 12250

Tax Map Number _____ Tax Lot No. 8-1-78.2 and 8-1-80 _____
(Section/Block/Lot)

Located in City of _____

Located in Town of Newburgh

Located in Village of _____

School District of Orange

C) Are utilities on site?

Water Yes

Gas No

Electric Yes

Sanitary/Storm Sewer Yes

D) Present legal owner of the site Helios Power Capital, LLC

If other than from applicant, by what means will the site be acquired for this project? **Helios Power Capital, LLC; Acquisition will be pursuant to a purchase option right granted to Danskammer Energy under the Ground Lease Agreement between Helios and Danskammer. Purchase option has not yet been exercised.**

E) Zoning of Project Site: Current: _____ Proposed: _____

F) Are any variances needed? No

G) Principal use of project upon completion: N/A

H) Will the project result in the removal of a plant or facility of the applicant from one area of the State of New York to another? No

Will the project result in the removal of a plant or facility of another proposed occupant of the project from one area of the State of New York to another area of the State of New York? No

Will the project result in the abandonment of one or more plants or facilities located in the State of New York? No

I) Estimate how many construction/permanent jobs will be created or retained as a result of this project and the estimated annual salary range:

	<u>Number of jobs created</u>	<u>Estimated Annual Salary Range</u>
Construction:	<u>30</u>	\$ <u>75,000</u> to \$ <u>150,000</u>
Permanent:	<u>40</u>	\$ <u>75,000</u> to \$ <u>150,000</u>
Retained:	<u>5</u>	\$ <u>75,000</u> to \$ <u>150,000</u>

J) Financial Assistance being applied for:

Estimated Value

X Real Property Tax Abatement

Please indicate the term of the PILOT: 10 Years

Applicant is seeking greater long-term certainty regarding the tax burden to be carried by the project. It seeks a long-term PILOT in effect keeping the existing tax assessment

in place, subject to annual 2% escalators. Valuing the facility is challenging, as it will be operated only on a limited basis to provide energy in times of greatest need. Applicant asserts there is business value in having certainty regarding the future taxes charged to the project, but cannot apply a monetary value, as the projected tax burden is reasonable given the projected use.

_____ Mortgage Tax Exemption	\$
Please provide the Mortgage Amount: \$ _____	
<u>X</u> _____ Sales and Use Tax Exemption	\$ 250,000
_____ Issuance by the Agency of Tax Exempt Bonds	\$

K) Project Costs (Estimates)

Land	_____ \$0.00
Building	_____ \$0.00
Equipment	_____ \$4,000,000.00
Soft costs	_____ \$2,000,000.00
Other	_____ \$8,000,000.00
Total	_____ \$14,000,000.00

III. REPRESENTATIONS BY THE APPLICANT


The Applicant understands and agrees with the Agency as follows:

- A. Job Listings In accordance with Section 858-b(2) of the New York General Municipal Law, the applicant understands and agrees that, if the proposed project receives any Financial Assistance from the Agency, except as otherwise provided by collective bargaining agreements, new employment opportunities created as a result of the proposed project must be listed with the New York State Department of Labor Community Services Division (the "DOL") and with the administrative entity

(collectively with the DOL, the "JTPA Entitle") of the service delivery area created by the federal job training partnership act (Public Law 97-300) ("JTPA") in which the project is located.

- B. First Consideration for Employment In accordance with Section 858-b(2) of the General Municipal Law, the applicant understands and agrees that, if the proposed project receives any Financial Assistance from the Agency, except as otherwise provided by collective bargaining agreements, where practicable, the applicant must first consider persons eligible to participate in JTPA programs who shall be referred by the JTPA Entities for new employment opportunities created as a result of the proposed project.
- C. A liability and contract liability policy for a minimum of three million dollars will be furnished by the Applicant insuring the Agency.
- D. Annual Sales Tax Filings In accordance with Section 874(8) of the General Municipal Law, the Applicant understands and agrees that, if the proposed project receives any sales tax exemptions as part of the Financial Assistance from the Agency, in accordance with Section 874(8) of the General Municipal Law, the applicant agrees to file, or cause to be filed, with the New York State Department of Taxation and Finance, the annual form prescribed by the Department of Taxation and Finance, describing the value of all sales tax exemptions claimed by the applicant and all consultants or subcontractors retained by the Applicant.
- E. Annual Employment Reports The applicant understands and agrees that, if the proposed project receives any Financial Assistance from the Agency, the applicant agrees to file, or cause to be filed, with the Agency, on an annual basis, reports regarding the number of people employed at the project site.
- F. Absence of Conflicts of Interest The applicant has received from the Agency a list of the members, officers, and employees of the Agency. No member, officers or employee of the Agency has an interest, whether direct or indirect, in any transaction contemplated by this Application, except as hereinafter described:

The Applicant and the individual executing this Application on behalf of applicant acknowledge that the Agency and its counsel will rely on the representations made in this Application when acting hereon and hereby represents that the statements made herein do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements contained herein not misleading.



(Applicant Signature)

Larry She

(Name of Officer)

President

(Title)

This Application should be submitted to the Orange County Industrial Development Agency, c/o Robert T. Armistead, Chairman, Orange County Business Accelerator, 4 Crotty Lane, Suite 100, New Windsor, NY 12553.

The Agency will collect an administrative fee at the time of closing.
SEE ATTACHED FEE SCHEDULE (page 10)

Bond Counsel
CHARLES SCHACHTER, ESQ./
RUSSELL GAENZLE, ESQ.
Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534
Tel: (585) 419-8633
Fax: (585) 419-8817

Attach copies of preliminary plans or sketches of proposed construction or rehabilitation or both.

Attach the following Financial Information of the Company

1. Financial statements for last two fiscal years (unless included in company's Annual Reports).
2. Company's annual reports (or Form 10-K's) for the two most recent fiscal years.
3. Quarterly reports (Form 10Q's) and current reports (Form 8-K's) since the most recent Annual Report, if any.
4. In addition, please attach the financial information described above in items 1, 2 and 3 of any expected Guarantor of the proposed bond issue, if different from the company.

HOLD HARMLESS AGREEMENT

Applicant hereby releases the ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY and the members, officers, servants, agents and employees thereof (the "Agency") from, agrees that the Agency shall not be liable for and agrees to indemnify, defend and hold the Agency harmless from and against any and all liability arising from or expense incurred by (A) the Agency's examination and processing of, and action pursuant to or upon, the attached Application, regardless of whether or not the Application or the Project described therein or the tax exemptions and other assistance requested therein are favorably acted upon by the Agency, (B) the Agency's acquisition, construction and/or installation of the Project described therein and (C) any further action taken by the Agency with respect to the Project; including without limiting the generality of the foregoing, all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. If, for any reason, the Applicant fails to conclude or consummate necessary negotiations, or fails, within a reasonable or specified period of time, to take reasonable, proper or requested action, or withdraws, abandons, cancels or neglects the Application, or if the Agency or the Applicant are unable to reach final agreement with respect to the Project, then, and in the event, upon presentation of an invoice itemizing the same, the Applicant shall

pay to the Agency, its agents or assigns, all costs incurred by the Agency in processing of the Application, including attorneys' fees, if any.

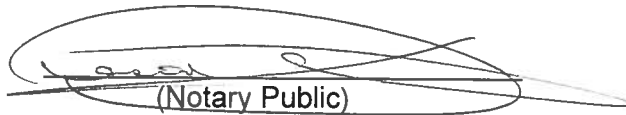


(Applicant Signature)

By: Larry She

Name: Danskammer Energy LLC

Title: President



(Notary Public)

Sworn to before me this 30th day
of July, 2014



**FEE SCHEDULE FOR THE
ORANGE COUNTY IDA IS AS FOLLOWS:**

Application Fee:

\$5,000 non-refundable, due at application, broken down as follows:

IDA Administrative Fee: \$2,500

IDA Transaction/Bond Counsel Fee: \$2,500

Closing Fee:

IDA Fee

One-percent of the first \$2,000,000 of the project cost (as identified on page 7 of this application), plus one-half percent of amount above that, due at closing.*

IDA Bond Counsel Fee

Balance due to be determined based on Project and overall structure (typically \$25,000 to \$35,000 plus out of pocket expenditures).

NOTE: IDA reserves the right to seek additional IDA and Bond Counsel fees for exceptionally complex/large transactions.

Please make all Checks payable to:

Orange County Industrial Development Agency

Mail to:

*4 Crotty Lane
New Windsor, NY 12553*

*In the event that an applicant does not seek or does not qualify for the IDA's enhanced PILOT or the equivalent of the State's 485-b program, the fee will be a straight one-half percent (0.5%) of the project cost (as identified on page 7 of this application).

**LABOR POLICY
ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY
Adopted 04-24-2014**

The Orange County Industrial Development Agency (IDA) was created for the purpose of creating employment opportunities for, and to promote the general prosperity and economic welfare of the residents of Orange County. The IDA offers economic incentives and benefits to qualified applicants who wish to locate or expand their businesses or facilities in Orange County. When the IDA approves a project, it enters into agreements to extend these incentives and benefits to the applicant.

Construction jobs, though limited in time duration, are vital to the overall employment opportunities in Orange County. The IDA believes that companies benefiting from its incentive programs should employ local laborers, mechanics, craft persons, journey workers, equipment operators, truck drivers and apprentices (hereinafter "construction workers"), including those who have returned from military service, during the construction phase of projects. In this way, the IDA can generate significant benefits to advance the County's general prosperity. It is, therefore, the policy of the IDA that firms benefiting from its programs

shall employ workers in Orange County during all project phases, including the construction phase.

For the purposes of this Policy, the local labor market for construction workers shall be defined as those individuals living in Orange, Ulster, Sullivan, Dutchess, Putnam, Rockland and Westchester Counties. Applicants receiving IDA benefits shall utilize at least 85% local labor for their approved projects. However, the IDA recognizes that the use of local labor may not be possible for the following reasons:

- 1) Warranty issues related to installation of specialized equipment whereby the manufacturer requires installation by only approved installers;
- 2) Specialized construction is required and no local contractors or local construction workers have the required skills, certifications or training to perform the work;
- 3) Significant cost differentials in bid prices whereby the use of local labor significantly increases the cost of the project. A cost differential of 10% is deemed significant. Every effort should be made by the contractor or applicant to get below the 10% cost differential including, but not limited to, meeting with local construction trade organizations and local contractor associations;
- 4) No local labor is available for the project; and
- 5) The contractor requires the use of key or core persons such as supervisors, foremen, or construction workers having special skills.

The request to secure an exemption for use of non-local labor must be received in writing from the applicant. The request will be reviewed by the Executive Director who shall have the authority to approve or disapprove the request. The Executive Director shall report each authorized exemption to the Board of Directors at its monthly meeting.

In addition, applicants receiving IDA benefits and Contractors on the project shall make every effort to utilize vendors, material suppliers, subcontractors and professional services from Orange County and the surrounding counties. Applicants and contractors shall be required to keep records of those local vendors, material suppliers, contractors and professional services who they have solicited and with whom they have contracted with or awarded.

It is the goal of the County of Orange and the IDA to promote the use of local veterans on projects receiving IDA benefits. By partnering with local contractors, local contractor groups, local trade unions and contractors awarded work on IDA projects there is opportunity for veterans to gain both short term and long term careers in the construction industry.

Once approved for IDA benefits, all applicants will be required to provide to the IDA's Executive Director the following information:

- 1) Contact information for the applicant's representative who will be responsible and accountable for providing information about the bidding and awarding of construction contracts relative to the application and project;
- 2) Description of the nature of construction jobs created by the project, including in as much detail as possible, the number, type and duration of construction positions;
- 3) The names, contact information, certificate of authorization to do business in the State of New York and copies of current Certificates of NYS Workers' Compensation Insurance, NYS Disability Insurance, General Liability Insurance and proof of current OSHA training certification for all contractors and their employees performing work on the site; and
- 4) A Construction Completion Report listing the names and business locations of prime contractors, subcontractors and vendors who have been engaged in the construction phase of the project.

All Orange County IDA projects are subject to local monitoring by the IDA. The Construction Manager, acting as agent for the applicant, on the project shall keep a log book on site detailing the number of workers on the job for each trade and the counties in which they reside which shall be subject to periodic inspection by the monitoring entity. The monitor shall issue a report to the Executive Director relative to compliance with this labor policy who shall share such information with the IDA Board of Directors. If a violation of the policy has occurred, the Executive Director shall notify the applicant in writing and give such applicant a warning of such violation. In the event there is a subsequent violation of the policy, the Executive Director shall bring such information to the Board of Directors which may, in its discretion, take action to revoke IDA benefits.

The applicant of an IDA approved project shall be required to maintain a 4' x 8' bulletin board on the project site containing the following information:

- 1) Contact information of the applicant;
- 2) Summary of the IDA benefits received; and
- 3) Contractors' names and contact information.

The bulletin board shall be located in an area that is accessible to onsite workers and visitors.

1100

MERCURIA ENERGY AMERICA, INC.
 5 GREENWAY PLAZA
 HOUSTON, TX 77046

J.P.Morgan

JPMorgan Chase Bank, N.A.
 New York, New York

1-2-210

7/29/2014

**PAY
 TO THE
 ORDER OF**

Orange County Industrial Development Agency

\$

5,000.00

DOLLARS

Five Thousand Dollars And Zero Cents

Orange County Industrial Development Agency

4 Crotty Lane
 New Windsor, NY 12553

MEMO

Ref: On behalf of Danskammer Energy, LLC /FID: 46-4106403


 AUTHORIZED SIGNATURE

Security features. Details on back.

⑈001100⑈ ⑈021000021⑈

801453960⑈

MERCURIA ENERGY AMERICA, INC.

Invoice number	Invoice date	Amount	Discount	Voucher/Ref #	Net amount
Ref: On behalf of Danskammer Energy, LLC /FID: 46-4106403	7/29/2014	\$ 5,000.00	0		5,000.00

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