

Motion By: Vanon
Seconded By: Schreibers

FINAL RESOLUTION
(Danskammer Energy, LLC Project)

A regular meeting of the Orange County Industrial Development Agency was held on October 9, 2014 at 2:00 p.m. (local time) at the Orange County Business Accelerator, 4 Crotty Lane, Suite 100, New Windsor, New York.

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to a proposed project for the benefit of Danskammer Energy, LLC (the "Company").

RESOLUTION AUTHORIZING THE ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY TO (i) TAKE TITLE TO OR A LEASEHOLD INTEREST IN APPROXIMATELY 52±-ACRES OF LAND (BEING MORE PARTICULARLY DESCRIBED AS TMID NOS. 8-1-78.2-1 and 8-1-80) LOCATED ON WEST HUDSON RIVER ROAD AND OLD POST ROAD, EACH IN THE TOWN OF NEWBURGH, ORANGE COUNTY, NEW YORK (THE "LAND") TOGETHER WITH THE 6 EXISTING GENERATORS LOCATED THEREON COMPRISING THE DANSKAMMER POWER STATION; (ii) APPOINT DANSKAMMER ENERGY, LLC AS ITS AGENT TO UNDERTAKE A CERTAIN PROJECT AS MORE FULLY DESCRIBED BELOW; (iii) NEGOTIATE AND EXECUTE A LEASE AGREEMENT, LEASEBACK AGREEMENT AND RELATED PAYMENT-IN-LIEU-OF-TAX AGREEMENT; (iv) PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF (A) A SALES TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE REPAIRING AND EQUIPPING OF THE PROJECT, (B) A PARTIAL REAL PROPERTY TAX ABATEMENT THROUGH THE PILOT AGREEMENT, AND (C) IF NECESSARY, A MORTGAGE RECORDING TAX EXEMPTION FOR THE FINANCING RELATED TO THE PROJECT; AND (v) EXECUTE RELATED DOCUMENTS.

WHEREAS, by Title I of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 390 of the Laws of 1972 of the State of New York, as amended (hereinafter collectively called the "Act"), the **ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (hereinafter called the "Agency") was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping civic, industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, **DANSKAMMER ENERGY, LLC**, a limited liability company formed and validly existing under the laws of the State of Delaware and authorized to do business in the State of New York, for itself or on behalf of an entity to be formed (the "Company"), has

requested the Agency's assistance with a certain project (the "Project") consisting of (i) the acquisition by the Agency of a leasehold interest in an aggregate approximately 52±-acres of land located West Hudson River Road and Old Post Road, each in the Town of Newburgh, Orange County, New York (the "Land", being more particularly described as TMID Nos. 8-1-78.2-1 and 8-1-80) together with the 6 existing generators located thereon comprising the Danskammer Power Station (the "Existing Improvements"), (ii) the repair or replacement "in kind" of the damaged components within the Existing Improvements (the "Improvements"); and (iii) the acquisition and installation in, on and around the Improvements of certain items of equipment and other tangible personal property including, but not limited to, piping and valves, generators, pumps, electrical switchgear and various instrumentation (collectively, the "Equipment" and, together with the Land and the Improvements, the "Facility"), all for continued use as a power plant; and

WHEREAS, the Agency directed that procedures for deviation from the Agency's Uniform Tax Exemption Policy (the "UTEP") be undertaken in accordance with Section 874 of the Act in connection with the financial assistance to be provided under a Payment-In-Lieu-Of-Tax Agreement; and

WHEREAS, notices of the proposed deviation and the reasons therefore were sent to each of the Affected Tax Jurisdictions on August 13, 2014 and the Affected Tax Jurisdictions have not commented on the proposed deviation; and

WHEREAS, pursuant to General Municipal Law Section 859-a, on September 3, 2014, at 10:00 a.m. local time, at the Newburgh Town Hall, 1496 Route 300, Newburgh, New York 12550, the Agency held a public hearing with respect to the Project and the proposed financial assistance being contemplated by the Agency (the "Public Hearing") whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views; and

WHEREAS, it is contemplated that the Agency will (i) designate the Company as its agent for the purpose of repairing and equipping the Facility pursuant to an agent agreement (the "Agent Agreement"), (ii) negotiate and enter into a lease agreement (the "Lease Agreement") and leaseback agreement (the "Leaseback Agreement") with the Company, (iii) take title to or a leasehold interest in the Land, the Improvements, the Equipment and personal property constituting the Project (once the Lease Agreement, Leaseback Agreement and PILOT Agreement have been negotiated), and (iv) provide financial assistance to the Company in the form of (a) a sales and use tax exemption for purchases and rentals related to the repairing and equipping of the Project, (b) a partial real property tax abatement through the PILOT Agreement, and (c) if necessary, a mortgage recording tax exemption for the financing related to the Project; and

WHEREAS, pursuant to the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and its implementing regulations at 6 N.Y.C.R.R. Part 617 (collectively referred to as "SEQRA"), the Company has prepared a Short Environmental Assessment Form ("EAF") to assist the Agency in determining whether the Project may present a potential significant adverse environmental impact; and

WHEREAS, the Project is classified as an "unlisted action" pursuant to Section 617.2(ak) of the SEQRA regulations subject to an uncoordinated review wherein the Agency shall act as lead agency for the purpose of completing the required SEQRA assessment for the Project; and

WHEREAS, pursuant to Article 18-A of the Act, the Agency desires to adopt a resolution describing the Project and the financial assistance that the Agency is contemplating with respect to the Project; and

WHEREAS, the Lease Agreement, Leaseback Agreement and PILOT Agreement and related documents have been negotiated and are presented to this meeting for approval and execution.

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

Section 1. The Company has presented an application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the Company's application and other correspondence submitted by the Company to the Agency, the Agency hereby finds and determines that:

(A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(B) It is desirable and in the public interest for the Agency to appoint the Company as its agent for purposes of acquiring, constructing and equipping the Project; and

(C) The Agency has the authority to take the actions contemplated herein under the Act; and

(D) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing employment opportunities in Orange County and otherwise furthering the purposes of the Agency as set forth in the Act; and

(E) The Project will not result in the removal of a civic, commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Project from one area of the State of New York (the "State") to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project located within the State; and the Agency hereby finds that, based on the Company's application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries; and

(F) After completing a review of the Project, the EAF, and all accompanying materials and documents, and based on the criteria for determining the environmental

significance of an action as set forth in Section 617.7(c) of the SEQRA regulations, the Agency determines that the Project will not result in changes to the operations of the Danskammer facility that may result in a potential significant adverse environmental impact. The Agency therefore determines that the Project will not present a potential significant adverse impact to the environment and adopts a Negative Declaration for the Project pursuant to Section 617.7 of the SEQRA regulations.

Section 2. Subject to the Company executing the Agent Agreement and the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, construction and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency: (i) to repair and equip the Project; (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency with the authority to delegate such agency, in whole or in part, to agents, subagents, contractors, and subcontractors of such agents and subagents and to such other parties as the Company chooses; and (iii) in general, to do all things which may be requisite or proper for completing the Project, all with the same powers and the same validity that the Agency could do if acting in its own behalf; provided, however, the Agent Agreement shall expire on **December 31, 2014** (unless extended for good cause by the Executive Director of the Agency) if the Lease Agreement, Leaseback Agreement and PILOT Agreement contemplated have not been executed and delivered.

Section 3. Based upon representations and warranties made by the Company in the Application, the Agency hereby authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Project, that would otherwise be subject to New York State and local sales and use tax in an amount up to **\$3,125,000**, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$250,000**. The Agency agrees to consider any requests by the Company for increase to the amount of sales and use tax exemption benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services. Pursuant to Section 875(3) of the New York General Municipal Law, the Agency may recover or recapture from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any sales and use tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or (iv) the sales and use tax exemption benefits are taken in cases where the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project. As a condition precedent of receiving sales and use tax exemption benefits, the Company, its agents, consultants,

subcontractors, or any other party authorized to make purchases for the benefit of the Project, shall (i) cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands.

Section 4. The Agency hereby confirms that the procedures for deviation from its UTEP have been complied with, including; (i) providing at least ten (10) days' notice to each of the Affected Tax Jurisdictions of such proposed deviation and the reasons therefore and (ii) providing opportunity to each affected tax jurisdiction to comment on the proposed deviation. No comments have been received from the Affected Tax Jurisdictions.

Section 5. The Chairman, Vice Chairman and/or the Executive Director of the Agency are hereby authorized, on behalf of the Agency, to negotiate and execute (A) the Lease Agreement whereby the Company leases the Project to the Agency, (B) the related Leaseback Agreement conveying the Project back to the Company, and (C) the PILOT Agreement; provided (i) the rental payments under the Leaseback Agreement include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project; and (ii) the terms of the PILOT Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with.

Section 6. The Chairman, Vice Chairman and/or Executive Director of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver any mortgage, assignment of leases and rents, security agreement, UCC-1 Financing Statements and all documents reasonably contemplated by these resolutions or required by any Lender identified by the Company (the "Lender") up to a maximum principal amount necessary to undertake the Project, acquire the Facility and/or finance or refinance equipment and other personal property and related transactional costs (hereinafter, with the Lease Agreement and Leaseback Agreement, collectively called the "Agency Documents"); and, where appropriate, the Secretary or Assistant Secretary of the Agency is hereby authorized to affix the seal of the Agency to the Agency Documents and to attest the same, all with such changes, variations, omissions and insertions as the Chairman, Vice Chairman and/or Executive Director of the Agency shall approve, the execution thereof by the Chairman, Vice Chairman and/or Executive Director of the Agency to constitute conclusive evidence of such approval; provided in all events recourse against the Agency is limited to the Agency's interest in the Project.

Section 7. 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 and to execute and deliver all such 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 resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 8. These Resolutions shall take effect immediately.

	<i>Yea</i>	<i>Nay</i>	<i>Absent</i>	<i>Abstain</i>
Robert T. Armistead	✓			
Mary Ellen Rogulski	✓			
Russell O. Vernon	✓			
Stephen Brescia			✓	
John Steinberg, Jr.			✓	
Henry VanLeeuwen	✓			
Robert Schreibeis, Sr.	✓			

The Resolutions were thereupon duly adopted.

STATE OF NEW YORK)
COUNTY OF ORANGE) ss: .

I, the undersigned ^{Chairman}~~Secretary~~ of the Orange County Industrial Development Agency, DO
HEREBY CERTIFY:

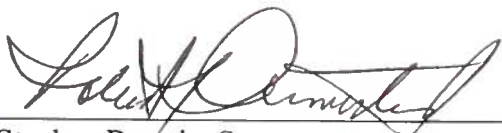
That I have compared the foregoing extract of the minutes of the meeting of the Orange County Industrial Development Agency (the "Agency") including the resolution contained therein, held on October 9, 2014, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that all members of said Agency had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with Article 7.

I FURTHER CERTIFY that 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 modified.

gth IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Agency this
day of October, 2014.



Stephen Brescia, Secretary
Robert T. Armistead, Chairman