

At a regular meeting of the County of Oswego Industrial Development Agency held in and for the County of Oswego on April 25, 2013 at 1:00 p.m. at 44 West Bridge Street, Oswego, New York.

## **RESOLUTION**

### **Conditionally Approving the Third Amended and Restated Payment in Lieu of Taxes Agreement For the Bennetts Bridge and Lighthouse Hill Hydroelectric Generation Facilities**

**WHEREAS**, Erie Boulevard Hydropower, L.P., (the "Company") has previously approached the County of Oswego Industrial Development Agency (the "Agency") and requested that the Agency adopt a Payment in Lieu of Taxes Agreement ("PILOT Agreement") to settle a tax certiorari action commenced by the Company and against the Town of Orwell (the "Town"), the Altmar-Parish-Williamstown Central School District (the "School District"), and the County of Oswego (the "County", and together with the Town, the School District, and any other taxing entity having jurisdiction over the Project Facility, the "Affected Tax Jurisdictions"); and

**WHEREAS**, the Agency, by resolution adopted on February 23, 2005 (the "Resolution"), previously agreed to undertake a certain project (the "Project") at the request of the Company consisting of (i) the acquisition of a leasehold interest in approximately 909 acres of improved real property located in the Town of Orwell, County of Oswego, State of New York and identified as tax parcel number 075.00-01-01.0 and commonly known as Bennetts Bridge and tax parcel number 089.0001-02.0 commonly known as Lighthouse Hill (collectively the "Facilities"), the improvement of the Facilities, and the acquisition and installation of certain machinery, equipment and other personal property (collectively the "Equipment") in the Facilities (the Facilities and the Equipment hereinafter collectively referred to as the "Project Facility"), and (ii) the conveyance of a leasehold interest in the Project Facility to the Company to maintain the operation of the Project Facility in Oswego County, to preserve the competitive position of the Company in the deregulated electric generation industry, to induce continued capital investment by the Company in the Project Facility, and to preserve the permanent private sector jobs currently existing at the Project Facility; and

**WHEREAS**, the Company is the current owner of the Project Facility; and

**WHEREAS**, pursuant to a certain Company Lease Agreement between the Company and the Agency dated as of February 1, 2005, as amended by the First Amendment to the Company Lease dated as of June 1, 2012, and as further amended by the Second Amendment to the Agency Lease dated as of June 29, 2012 (collectively the "Company Lease") the Company leased the Project Facility to the Agency, and pursuant to a certain Agency Lease Agreement between the Company and the Agency dated as of February 1, 2005, as amended by the First Amendment to the Agency Lease dated as of June 1, 2012, and as further amended by the Second Amendment to the Agency Lease dated as of June 29, 2013 (collectively the "Agency Lease"), the Agency subleased the Project Facility to the Company; and

**WHEREAS**, under the present provisions of the Act and Section 412-a of the Real Property Tax Law of the State of New York ("RPTL"), the Agency is not required to pay real property taxes upon any of the property acquired by it or under its jurisdiction, supervision or control; and

**WHEREAS**, the Affected Tax Jurisdictions have consented to the proposed PILOT Payments as set forth in the Agreement and attached hereto and made a part of this Resolution; and

**WHEREAS**, the Agency has previously adopted a Uniform Tax Exemption Policy (the "UTEP") to provide guidance for the claiming of sales and use tax and mortgage recording tax exemptions, and real property tax abatement; and

**WHEREAS**, the proposed PILOT Payments are not consistent with the UTEP and would require the Agency to deviate from such policy; and

**WHEREAS**, on or about March 7, 2013, the Town adopted a resolution agreeing to extend the Third Amended and Restated Payment in Lieu of Tax Agreement, ("Amended PILOT") by seven years, and on March 28, 2013, the School District similarly adopted a resolution agreeing to extend the Amended PILOT, and the County having taken no formal action to consent to the Amended PILOT; and

**WHEREAS**, by resolution dated April 25, 2013, the Agency approved the seven year extension to the PILOT Agreement as amended and fully restated herein and the Company's request for deviation from the UTEP pending and conditioned upon the holding of the Public Hearing; and

**NOW, THEREFORE**, upon motion made by IDA Board Member Sorbello, and seconded by IDA Board Member Schick, it is and shall hereby be:

**RESOLVED**, that the Third Amended and Restated Payment in Lieu of Taxes Agreement for the Bennetts Bridge and Lighthouse Hill Hydroelectric Generation Facilities entered into between the County of Oswego Industrial Development Agency and Erie Boulevard Hydropower, L.P. to be dated as of June 1, 2013, is hereby conditionally approved subject to the holding of a public hearing to be scheduled at a date, time and location to be determined; and it is further

**RESOLVED**, that the Chief Executive Officer and (Vice) Chairperson are hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the documents and agreements identified herein and any such additional certificates, instruments, documents, amendments or affidavits and to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to herein and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this Resolution; and it is further

**RESOLVED**, that a copy of the Final Approving Resolution shall be provided to the taxpayer and the Town of Orwell, A-P-W School District and County of Oswego.

This Resolution having been presented to the Agency for consideration was adopted unanimously by the members present and constituting a quorum.

Date: April 25, 2013

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L. Michael Treadwell  
Chief Executive Officer