

## INITIAL RESOLUTION

*(Canandaigua Power Partners II, LLC Project – Dutch Hill)*

A regular meeting of the Steuben County Industrial Development Agency was convened on Thursday, September 26, 2019.

The following resolution was duly offered and seconded, to wit:

Resolution No. 09/2019 - 43

RESOLUTION OF THE STEUBEN COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") (i) ACCEPTING THE APPLICATION OF CANANDAIGUA POWER PARTNERS II, LLC WITH RESPECT TO A CERTAIN PROJECT (AS MORE FULLY DESCRIBED BELOW), (ii) MAKING A DETERMINATION PURSUANT TO SEQRA (AS DEFINED BELOW), (iii) AUTHORIZING A PUBLIC HEARING WITH RESPECT TO THE PROJECT, (iv) DESCRIBING THE FORMS OF FINANCIAL ASSISTANCE BEING CONTEMPLATED WITH RESPECT TO THE PROJECT, AND (v) AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS AS DESCRIBED BELOW

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 178 of the Laws of 1972 of the State of New York, as amended (hereinafter collectively called the "Act"), the **STEUBEN COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (hereinafter called "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 industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, by resolutions adopted by the Agency on August 23, 2007 and January 24, 2008 (together, the "Original Resolution"), the Agency authorized the execution and delivery of certain documents in connection with a certain project (the "Original Project") undertaken by **CANANDAIGUA POWER PARTNERS II, LLC** (the "Company"), as agent of the Agency, consisting of: (i) the acquisition by the Agency of fee title to or a leasehold interest in various parcels of land consisting of approximately 2,560 acres of leased land located off of Shults Hill Road, Fleishman Road, Davis Hollow Road, Dutch Hill Road, Drum Road, Atlanta Back Road, Jeh Road, State Route 371 and Edmond Road, all within the Town of Cohocton, Steuben County, New York, as more fully described on Schedule 1 attached hereto (collectively, the "Land"), (ii) the construction and equipping on the Land of a wind energy generation facility consisting of approximately fifteen (15) wind turbines with the capacity to produce, in the aggregate, 37.5 megawatts of power, based on the manufactured design specifications of each wind turbine (a "nameplate capacity"), together with related substations, overhead and underground cabling and roadways for the production of wind-generated electricity (the "Original Improvements"), (iii) the acquisition of and installation in and around the Original Improvements of certain additional items of equipment and personal property necessary for the operation and maintenance of the wind energy generation facility (the

"Original Equipment"; and, collectively with the Land and the Original Improvements, the "Original Facility"); and

WHEREAS, in connection with the Original Project, the Agency and the Company entered into, among other documents, a certain (i) lease and assignment of leases and easements agreement, dated as of February 1, 2008, as amended, restated and supplemented from time to time (the "2008 Lease Agreement"), (ii) leaseback agreement, dated as of February 1, 2008, as amended, restated and supplemented from time to time (the "2008 Leaseback Agreement"), and (iii) payment in lieu of tax agreement, dated as of February 1, 2008 as amended, restated and supplemented from time to time (the "2008 Tax Agreement"; and together with the 2008 Lease Agreement and 2008 Leaseback Agreement, the "2008 Agency Documents"); and

WHEREAS, pursuant to Article 18-A of the General Municipal Law the Agency desires to adopt a resolution describing the Project and the Financial Assistance (as defined below) that the Agency is contemplating with respect to the Project; and

WHEREAS, the Company has submitted an application (the "Application") to the Agency, a copy of which is on file with the Agency, requesting the Agency's assistance with a certain project (the "Project"), consisting of (i) the retention by the Agency of its interest in the Land, (ii) the replacement of the Original Improvements to extend the useful life of the Original Facility (the "2019 Improvements"), and (iii) the acquisition and installation by the Company in and around the Original Improvements of certain items of equipment and other tangible personal property to undertake the Project (the "2019 Equipment"; and, collectively with the Land and the 2019 Improvements, the "Facility"); and

WHEREAS, it is contemplated that the Agency will hold a public hearing and (i) negotiate and enter into a certain project agreement, pursuant to which the Agency will appoint the Company as its agent for the purpose of undertaking the Project (the "Project Agreement"), (ii) negotiate and enter into an Amended and Restated 2008 Lease Agreement (the "Lease Agreement"), Amended and Restated 2008 Leaseback Agreement (the "Leaseback Agreement") and Amended and Restated 2008 Tax Agreement (the "Tax Agreement"), or similar documents, (iii) retain its interest in the Land, (iv) acquire a leasehold interest in the 2019 Improvements, the 2019 Equipment and personal property constituting the Facility (once the Lease Agreement, Leaseback Agreement and Tax Agreement have been negotiated), and (v) provide Financial Assistance to the Company in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction, reconstruction, renovation, replacement and equipping of the Facility, and (b) a partial real property tax abatement structured within the Tax Agreement (collectively, the "Financial Assistance"); and

WHEREAS, pursuant to the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto at 6 N.Y.C.R.R. Part 617, as amended (collectively referred to as "SEQRA"), the Agency must satisfy the applicable requirements set forth in SEQRA, as necessary, prior to making a final determination whether to undertake the Project; and

WHEREAS, the Town of Cohocton Planning Board (the "Town"), by a findings statement, dated July 11, 2007, determined that the requirements of SEQRA had been met with

respect to the Original Project, and were consistent with social, economic, and other essential considerations from among the reasonable alternatives available; and that the Original Project action was one that avoided or minimized adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts would be avoided or minimized to the maximum extent practicable by incorporating, as conditions to its special use permit, those mitigative measures that were identified as practicable (collectively, the "Original SEQRA Findings"); and

WHEREAS, by a certain Findings Statement of the Agency, dated January 24, 2008, attached hereto as Exhibit A, the Agency certified the Findings Statement of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE STEUBEN 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, 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) The Agency has the authority to take the actions contemplated herein under the Act; and

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

(D) 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.

(E) The Town, as lead agency, upon completing a review of a Supplemental Environmental Assessment prepared by the Company, determined that the requirements of SEQRA have been satisfied and that no further environmental review is required.

Section 2. The Chairman, Vice Chairman and/or Executive Director of the Agency are hereby authorized, on behalf of the Agency, to (A) hold a public hearing in compliance with the Act, and (B) (1) negotiate and execute a Project Agreement, pursuant to which the Agency appoints the Company as its agent to undertake the Project; (2) negotiate a Lease Agreement,

pursuant to which the Company leases the Project to the Agency, (3) negotiate a related Leaseback Agreement, pursuant to which the Agency leases its interest in the Project back to the Company, (4) negotiate a Tax Agreement, pursuant to which the Company agrees to make certain payments in lieu of real property taxes for the benefit of affected tax jurisdictions, and (5) negotiate related documents; 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 Tax Agreement is consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation therefrom have been complied with.

Section 3. The Agency is hereby authorized to conduct a public hearing in compliance with the Act.

Section 4. 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 5. These Resolutions shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to vote on roll call, which resulted as follows:

	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Absent</i>
Michael Nisbet	[ ✓ ]	[ ]	[ ]	[ ]
Joseph Hauryski	[ ✓ ]	[ ]	[ ]	[ ]
Anthony Russo	[ ]	[ ]	[ ]	[ ✓ ]
Mark Alger	[ ✓ ]	[ ]	[ ]	[ ]
Christine Sharkey	[ ✓ ]	[ ]	[ ]	[ ]
Michael Doyle	[ ✓ ]	[ ]	[ ]	[ ]
Dean Strobel	[ ✓ ]	[ ]	[ ]	[ ]

The Resolutions were thereupon duly adopted.

**SECRETARY'S CERTIFICATION**  
*(Canandaigua Power Partners II, LLC Project – Dutch Hill)*

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

I, the undersigned, Secretary of the Steuben County Industrial Development Agency DO HEREBY CERTIFY:

That I have compared the annexed extract of minutes of the meeting of the Steuben County Industrial Development Agency (the "Agency"), including the resolution contained therein, held on September 26, 2019, with the original thereof on file in the Agency's 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 related 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 such 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.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency this 26 day of September, 2019.



  
Secretary

**Schedule 1**

Land

[Attached Next Page]

**Exhibit A**

Agency's SEQR Findings Statement – Dutch Hill

[Attached Next Page]