

**RESOLUTION AMENDING RESOLUTION AUTHORIZING PILOT DEVIATION  
AND FIFTH AMENDMENT TO PILOT AGREEMENT  
SARANAC POWER PARTNERS, L.P.**

A regular meeting of County of Clinton Industrial Development Agency (the "Agency") was convened in public session in the offices of the Agency located at 190 Banker Road, Suite 500 in the Town of Plattsburgh, Clinton County, New York on January 8, 2018 at 12:00 o'clock p.m., local time.

The meeting was called to order by the (Vice) Chairperson of the Agency and, upon roll being called, the following members of the Agency were:

PRESENT:

Trent Trahan	Chairperson
David Hoover	Vice Chairperson
Michael E. Zurlo	Secretary
Kim Murray	Assistant Secretary
Keith Defayette	Treasurer
John VanNatten	Member

EXCUSED:

Mark Leta	Member
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THE FOLLOWING PERSONS WERE ALSO PRESENT:

Barbara Shute	Recording Secretary
George W. Cregg, Jr., Esq.	Agency Counsel Via Phone

The following resolution was offered by J. VanNatten, seconded by K. Murray, to wit:

Resolution No. 01-18-01

RESOLUTION AMENDING A RESOLUTION ENTITLED "RESOLUTION AUTHORIZING (A) A DEVIATION FROM THE AGENCY'S UNIFORM TAX EXEMPTION POLICY AND (B) THE AMENDMENT OF AN EXISTING PILOT AGREEMENT IN CONNECTION WITH THE SARANAC POWER PARTNERS, L.P. PROJECT."

WHEREAS, County of Clinton Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of 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 225 of the 1971 Laws of New York, as amended, constituting Section 895-f 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 commercial 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 or about December 29, 1992 (the “Closing Date”), the Agency entered into an installment sale agreement dated as of December 29, 1992 (the “Installment Sale Agreement”) between the Agency and the Project Company and other related documents for the purpose of undertaking the following project (the “Project”) for the benefit of the Project Company: (A) (1) the acquisition of fee title to, leasehold interests in and certain easements to various parcels of real property located in the Town of Plattsburgh, Clinton County, New York (the “Land”), (2) the construction on the Land of a 240MW natural gas-fired cogeneration facility and related transmission lines and electrical energy interconnection facilities (the “Facility”) and (3) the acquisition and installation of various machinery and equipment (the “Equipment”) (the Land, the Facility and the Equipment hereinafter collectively referred to as the “Project Facility”); (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from sales taxes, real estate transfer taxes, mortgage recording taxes and real property taxes (the “Financial Assistance”); and (C) the sale of the Project Facility to the Project Company pursuant to the Installment Sale Agreement; and

WHEREAS, on or about December 29, 1992, the Agency acquired various interests in the Land pursuant to various conveyance documents executed on or about December 29, 1992 from the Project Company to the Agency; and

WHEREAS, simultaneously with the execution and delivery of the Installment Sale Agreement, (A) the Project Company and the Agency executed and delivered the Original Payment in Lieu of Tax Agreement) by and among the Agency, the Project Company and the Pilot Mortgage Agent, pursuant to which the Project Company agreed to pay certain payments in lieu of taxes with respect to the Project Facility to the Clinton County Treasurer (the “Treasurer”) for distribution to the appropriate Taxing Entities entitled to same pursuant to the provisions of the Existing Payment in Lieu of Tax Agreement, (B) the Agency filed with the assessor and mail to the chief executive officer of each “affected tax jurisdiction” (within the meaning of such quoted term in Section 854(16) of the Act, the “Affected Tax Jurisdictions”) a copy of a New York State Board of Real Property Services Form 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) (the “Real Property Tax Exemption Form”) relating to the Project Facility and the Existing Payment in Lieu of Tax Agreement, and (C) the Project Company and the Agency executed and delivered a pilot mortgage dated as of December 29, 1992 (the “Original Pilot Mortgage”, and sometimes hereinafter referred to as the “Pilot Mortgage”) from the Agency and the Project Company, as mortgagor, and the Pilot Mortgage Agent, as mortgagee (the “Pilot Mortgagee”), pursuant to which the Project Company and the Agency agreed to grant to the Pilot Mortgagee a mortgage lien on the Project Facility as security for, among other things, the obligation of the Project Company to make all payments and all other obligations of the Project Company for the benefit of the Agency and the Taxing Entities under the Original Payment in Lieu of Tax Agreement (the Installment Sale Agreement, the Original Payment in Lieu of Tax Agreement, the Real Property Tax Exemption Form and the Original Pilot Mortgage being sometimes collectively referred to as the “Basic Documents”); and

WHEREAS, the Original Payment in Lieu of Tax Agreement was amended by a first amendment to payment in lieu of tax agreement dated as of March 1, 2009 (the “First Amendment to Payment in Lieu of Tax Agreement”), and further amended pursuant to a second amendment to payment in lieu of tax agreement dated as of December 1, 2009 (the “Second Amendment to Payment in Lieu of Tax Agreement”), and further amended pursuant to a third amendment to payment in lieu of tax agreement dated as of December 1, 2013 (the “Third Amendment to Payment in Lieu of Tax Agreement”) and further amended pursuant to a fourth amendment to payment in lieu of tax agreement dated as of December 1, 2016 (the “Fourth Amendment to Payment in Lieu of Tax Agreement”) (the Original Payment in Lieu of Tax Agreement”, as amended by the First Amendment to the Payment in Lieu of Tax Agreement, the Second Amendment to Payment in Lieu of Tax Agreement, the Third Amendment to Payment in Lieu of Tax Agreement and the Fourth Amendment to Payment in Lieu of Tax Agreement, being hereinafter referred to as the “Existing Payment in Lieu of Tax Agreement”), each by and among the Agency, the Project Company and the Pilot Mortgage Agent; and

WHEREAS, currently the Project Company pays (A) \$420,000 a year to the Clinton County Treasurer (the “Treasurer”) for distribution to the Affected Tax Jurisdictions in the manner provided in the Existing Payment in Lieu of Tax Agreement and (B) an additional \$280,000 a year to the Town of Plattsburgh (the “Town”) pursuant to a host community agreement (the “Host Community Agreement”) between the Project Company and the Town; and

WHEREAS, pursuant to a request from the Project Company dated May 31, 2016, as supplemented by additional requests dated June 29, 2016 and May 16, 2017 (collectively, the “Pilot Request”), the Project Company requested that the Agency amend the Existing Payment in Lieu of Tax Agreement to (A) extend the term thereof through the end of calendar year 2023 and (B) reduce the payments due under the Existing Payment in Lieu of Tax Agreement and the Host Community Agreement by 37.5%; and

WHEREAS, pursuant to the Pilot Request, the Agency, by resolution adopted on August 8, 2016 (the “Public Hearing Resolution”), authorized the Executive Director of the Agency to (A) cause notice of a public hearing of the Agency (the “Public Hearing”), pursuant to Section 859-a of the Act, to be (1) mailed on November 3, 2016 to the chief executive officers of the county and of each city, town, village and school district in which the Project Facility is to be located (each, an “Affected Tax Jurisdiction”), (2) published on November 11, 2016 in the Press Republican, a local newspaper of general circulation available to the residents of the Town of Plattsburgh, Clinton County, New York and (3) posted on November 7, 2016 on the Agency’s website and also as a public bulletin board located at the Town of Plattsburgh offices located at 151 Banker Road in the Town of Plattsburgh, Clinton County, New York, (B) conduct the Public Hearing on November 30, 2016 at 3:00 o’clock p.m. in the office of the Agency located at 190 Banker Road, Suite 500 in the Town of Plattsburgh, Clinton County, New York, (C) prepare a report of the Public Hearing (the “Report”) and give a copy of the Report to each member of the Agency, (D) give notice of the proposed deviation from the Agency’s uniform tax exemption policy in connection with the Pilot Request (the “Pilot Deviation Notice”) to the chief executive officers of the Affected Tax Jurisdictions, and (E) invite comments from said chief executive officers with respect to the Pilot Request; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the “Regulations” and collectively with the SEQR Act, “SEQRA”),

by the Public Hearing Resolution, the Agency determined that the Pilot Request constitutes a “Type II action” pursuant to 6 NYCRR 617.5(c)(26), and therefor that, pursuant to 6 NYCRR 617.6(a)(1)(i), the Agency has no further responsibilities under SEQRA with respect to the Pilot Request and the requested amendments to the Existing Payment in Lieu of Tax Agreement; and

WHEREAS, in order to give the Agency time to hire an independent consultant intended to provide the Agency with information regarding the financial future and viability of the Project and the impact of the requested amendment to the Existing Payment in Lieu of Tax Agreement, the Agency entered into the Fourth Amendment to Payment in Lieu of Tax Agreement extending the term of the Existing Payment in Lieu of Tax Agreement until the end of calendar year 2017; and

WHEREAS, the Agency (A) hired an independent consultant (the “Consultant”) to provide the Agency with information regarding the financial future and viability of the Project and the impact of the requested amendment to the Existing Payment in Lieu of Tax Agreement, and (B) received a report from the Consultant (the “Consultant’s Report”) describing the financial future and viability of the Project and the impact of the requested amendment to the Existing Payment in Lieu of Tax Agreement; and

WHEREAS, pursuant to the Pilot Request, the Agency, by resolution adopted on October 16, 2017 (the “Pilot Deviation Notice Resolution”), authorized the Executive Director of the Agency to (A) give notice to the chief executive officers of the Affected Tax Jurisdictions of a proposed revised deviation from the Agency’s uniform tax exemption policy in connection with the Pilot Request (the “Revised Pilot Deviation Notice”), and (B) invite comments from said chief executive officers with respect to the Pilot Request; and

WHEREAS, as a result of discussions had by the Agency with the Affected Tax Jurisdictions, by resolution adopted by the members of the Agency on December 11, 2017 (the “Fifth Amended Pilot Deviation Resolution”), the Agency determined to approve the Pilot Request, subject to the following modifications (the “Modifications”): (1) the term of the Fifth Amendment to Payment in Lieu of Tax Agreement shall extend through the end of calendar year 2023, (2) the Fifth Amendment to Payment in Lieu of Tax Agreement shall provide that the Project Company shall pay an amount equal to \$273,000 per year to the Treasurer for the benefit of the Taxing Entities and (3) the payments received by the Treasurer under the Fifth Amendment to Payment in Lieu of Tax Agreement shall be distributed each year by the Treasurer to the Taxing Entities in the same manner as normal taxes would be so distributed (i.e., a pro rata distribution), subject to the following contingencies (the “Contingencies”): (a) on or before March 31 of each calendar year of the term of the Fifth Amendment to Payment in Lieu of Tax Agreement, the Project Company shall provide to the Agency an audited financial statement (each, an “Audited Financial Statement”) showing, among other things, the Project Facility’s “free cash flow” (as defined by adding depreciation, amortization and operating income from audited financial statements for the prior fiscal year); (b) if in any calendar year during the term of the Fifth Amendment to Payment in Lieu of Tax Agreement the Project Company fails to deliver an Audited Financial Statement to the Agency as required by the preceding clause, or if an Audited Financial Statement delivered to the Agency pursuant to the preceding clause shows that the Project Facility’s “free cash flow” (as defined by adding depreciation, amortization and operating income from audited financial statements for the prior fiscal year) exceeds the 2015 total of \$4,834,000, then the payment in lieu of tax payment to be paid by the Project Company in such calendar year shall be increased to \$420,000; and (c) the Project Company and the Town enter into an agreement that includes (1) withdrawal of the Project Company’s Article 7 petition; (2) the Project Company is required to pay annual payments of at least \$182,000 per year to the Town under the Host Community Agreement;

(3) agreement by the Project Company to accept and not challenge the current \$32 million assessed value on the Project Facility through the end of calendar year 2022; and (4) agreement by the Town and the Company that, in calendar year 2023, the Town will reduce the Facility's assessed value such that, in the first year the Project Facility returns to the tax rolls, the new assessed value yields a total of approximately \$455,000 in general taxes payable to the Taxing Entities at current tax rates (excluding special district taxes); and

WHEREAS, subsequent to the adoption of the Fifth Amended Pilot Deviation Resolution, comments were received from the affected taxing jurisdictions to the proposed Fifth Amendment to Pilot Agreement;

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

Section 1. In order to accommodate comments were received from the affected taxing jurisdictions to the proposed Fifth Amendment to Pilot Agreement, the Agency hereby amends the Fifth Amended Pilot Deviation Resolution to read as follows:

(A) The Agency hereby determines to modify the Modifications approved by the Affected Tax Jurisdictions by removing item (3)(c)(4) (requiring the Town to reduce the Facility's assessed value in calendar year 2023) therefrom, and, to reflect said removal, the fourteenth (14<sup>th</sup>) recital clause of the Fifth Amended Pilot Deviation Resolution is hereby amended to read as follows

“WHEREAS, as a result of discussions had by the Agency with the affected tax jurisdictions, the Agency now desires to approve the Pilot Request, subject to the following modifications/conditions (collectively, the “Modifications”):

“(A) OPTION A: if the affected tax jurisdictions pass resolutions by December 15, 2017 agreeing that the payments in lieu of tax revenues will be distributed each year in accordance with the sliding scale attached hereto as Schedule I or in accordance with a different agreed upon distribution method (such sliding scale distribution or alternative distribution method being collectively referred to as the “Agreed Distribution Method”), then the Fifth Amendment to Payment in Lieu of Tax Agreement shall provide that (1) the term of the Fifth Amendment to Payment in Lieu of Tax Agreement shall extend through the end of calendar year 2023, (2) the Fifth Amendment to Payment in Lieu of Tax Agreement shall provide that the Company shall pay an amount equal to \$273,000 per year to the Treasurer for the benefit of the Taxing Entities and (3) the payments received by the Treasurer under the Fifth Amendment to Payment in Lieu of Tax Agreement shall be distributed each year by the Treasurer to the Taxing Entities in accordance with the Agreed Distribution Method, subject to the following contingencies (the “Option A Contingencies”):

(a) on or before March 31 of each calendar year of the term of the Fifth Amendment to Payment in Lieu of Tax Agreement, the Company shall provide to the Agency an audited financial statement (each, an “Audited Financial Statement”) showing, among other things, the Project Facility's “free cash flow” (as defined by adding depreciation, amortization and operating income from audited financial statements for the prior fiscal year);

(b) if in any calendar year during the term of the Fifth Amendment to Payment in Lieu of Tax Agreement the Company fails to deliver an Audited Financial Statement to the Agency as required by the preceding clause, or if an Audited Financial Statement delivered to the Agency pursuant to the preceding clause shows that the Project Facility’s “free cash flow” (as defined by adding depreciation, amortization and operating income from audited financial statements for the prior fiscal year) exceeds the 2015 total of \$4,834,000, then the payment in lieu of tax payment to be paid by the Company in such calendar year shall be increased to \$420,000; and

(c) the Company and the Town enter into an agreement that includes (1) withdrawal of the Company’s Article 7 petition; (2) agreement by the Company to pay annual payments of at least \$182,000 per year to the Town under the Host Community Agreement; and (3) agreement by the Company to accept and not challenge the current \$32 million assessed value on the Project facility through the end of calendar year 2022; OR

(B) OPTION B: if the affected tax jurisdictions do not pass resolutions by December 15, 2017 as described under OPTION A above, then the Fifth Amendment to Payment in Lieu of Tax Agreement shall provide that (1) the term of the Fifth Amendment to Payment in Lieu of Tax Agreement shall extend through the end of calendar year 2023, (2) the Fifth Amendment to Payment in Lieu of Tax Agreement shall provide that the Company shall pay an amount equal to \$273,000 per year to the Treasurer for the benefit of the Taxing Entities and (3) the payments received by the Treasurer under the Fifth Amendment to Payment in Lieu of Tax Agreement shall be distributed each year by the Treasurer to the Taxing Entities in the same manner as normal taxes would be so distributed (i.e., a pro rata distribution), subject to the following contingencies (the “Option B Contingencies”):

(a) on or before March 31 of each calendar year of the term of the Fifth Amendment to Payment in Lieu of Tax Agreement, the Company shall provide to the Agency an audited financial statement (each, an “Audited Financial Statement”) showing, among other things, the Project Facility’s “free cash flow” (as defined by adding depreciation, amortization and operating income from audited financial statements for the prior fiscal year);

(b) if in any calendar year during the term of the Fifth Amendment to Payment in Lieu of Tax Agreement the Company fails to deliver an Audited Financial Statement to the Agency as required by the preceding clause, or if an Audited Financial Statement delivered to the Agency pursuant to the preceding clause shows that the Project Facility’s “free cash flow” (as defined by adding depreciation, amortization and operating income from audited financial statements for the prior fiscal year) exceeds the 2015 total of \$4,834,000, then the payment in lieu of tax payment to be paid by the Company in such calendar year shall be increased to \$420,000; and

(c) the Company and the Town enter into an agreement that includes (1) withdrawal of the Company’s Article 7 petition; (2) agreement by the Company to pay annual payments of at least \$182,000 per year to the Town under the Host Community Agreement; and (3) agreement by the Company to accept and not challenge the current \$32 million assessed value on the Project facility through the end of calendar year 2022; and”

(B) The Agency notes that the Affected Tax Jurisdictions did not pass the resolutions by December 15, 2017 required under Option A of the Modifications, and thus the Fifth Amendment to Payment in Lieu of Tax Agreement shall conform to the provisions set forth under Option B of the Modifications.

(C) For ease of review and administration by the parties thereto and the Affected Tax Jurisdictions, the proposed Fifth Amendment to the Payment in Lieu of Tax Agreement may take the form of an amended and restated payment in lieu of tax agreement, effective as of January 1, 2018, which amended and restated payment in lieu of tax agreement may state that the Existing Payment in Lieu of Tax Agreement shall govern with respect to payments due thereunder prior to January 1, 2018.

Section 2. Except as amended by this Resolution, the Resolution Authorizing Pilot Deviation and Fifth Amendment to Pilot Agreement shall remain in full force and effect and the terms and conditions thereof are hereby confirmed.

Section 3. 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:

Trent Trahan	VOTING	YES
David Hoover	VOTING	YES
Michael E. Zurlo	VOTING	YES
Kim Murray	VOTING	YES
Keith Defayette	VOTING	YES
Mark Leta	VOTING	EXCUSED
John VanNatten	VOTING	YES

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK            )  
  ) SS:  
COUNTY OF CLINTON         )

I, the undersigned (Assistant) Secretary of County of Clinton Industrial Development Agency (the “Agency”), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on January 8, 2018 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of the whole of such proceedings of the Agency and of such Resolution set forth therein 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”), 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 8th day of January, 2018.

  
Michael E. Zurlo, Secretary



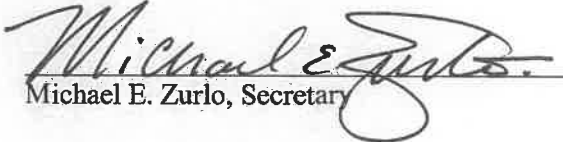
STATE OF NEW YORK            )  
  ) SS:  
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Michael E. Zurlo, Secretary

