
TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY

AND

GB II NEW YORK, LLC

FIRST AMENDMENT TO
PILOT AGREEMENT

DATED AS OF DECEMBER 1, 2023

RELATING TO A PARCEL OF LAND KNOWN AS THE FORMER
ALBANY STEAM STATION AND LOCATED ALONG ROUTE 144
(TAX MAP NO. 98.00-2-10.1) IN THE TOWN OF BETHLEHEM,
ALBANY COUNTY, NEW YORK.

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FIRST AMENDMENT TO
PAYMENT IN LIEU OF TAX AGREEMENT

THIS FIRST AMENDMENT TO PAYMENT IN LIEU OF TAX AGREEMENT dated as of December 1, 2023 is by and between TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 445 Delaware Avenue, Delmar, New York (the “Agency”), and GB II NEW YORK, LLC, as successor-in-interest to PSEG Power New York Inc. (the “Original Company”), a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business located at 300 Atlantic Street, 5th Floor, Stamford, Connecticut (the “Company”);

WITNESSETH:

WHEREAS, Title One of Article 18-A of the General Municipal Law of the State of New York (as amended, the “Enabling Act”) was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the “State”) and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment, deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for, among others, manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease or sell its projects and to charge and collect rent or the purchase price therefor; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 582 of the Laws of 1973 Laws of New York, as amended, constituting Section 909-b of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, on February 5, 2002 (the “Closing Date”), the Agency entered into a lease agreement dated February 5, 2002 (the “Original Lease Agreement”) by and between the Agency and the Original Company for the purpose of undertaking a project (the “Project”) consisting of the following: (A) (1) the acquisition by the Agency of an interest in the existing Albany Steam Station, including a portion of the switchyard, located on property roughly 84 acres in size along Route 144 in the Glenmont section in the Town of Bethlehem, Albany County, New York (the “Land”), (2) the construction on the Land of an electric generating plant, consisting of an approximately 82,000 square-foot turbine building and an approximately 17,500 square-foot plant services building, which would serve a nominal 750 megawatt, 763 megawatt maximum summer rating, 800 megawatt winter rating, natural gas-fired combined cycle turbine facility, utilizing three frame 7FA GE gas combustion turbines, the primary fuel for which would be natural gas with limited use of low sulfur distillate oil (0.04% sulfur) as a secondary fuel (collectively referred to as the “Improvements”), and (3) the acquisition by the Agency and the

installation at and on the Land and Improvements of a variety of equipment, machinery, and other personal property (the "Equipment") (the Land, the Improvements and the Equipment hereinafter collectively referred to as the "Facility") including the following in connection with the appointment of the Original Company as the agent of the Agency, as they related to the construction, erection and completion of such Facility, whether or not any materials or supplies described therein were incorporated into or became an integral part of such Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with construction of the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with construction of the Facility, and (iii) all equipment, machinery, and other tangible personal property (including installation costs with respect thereto), both existing and to be acquired, installed or placed in, upon or under such Facility, all of the foregoing to be owned and operated by the Original Company as an electric generation facility and other directly and indirectly related activities; (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 certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) of the Facility to the Original Company or such other person as may be designated by the Original Company and agreed upon by the Agency; and

WHEREAS, simultaneously with the execution and delivery of the Original Lease Agreement (the "Closing"), (A) the Original Company executed and delivered to the Agency a warranty deed dated February 5, 2002 (the "Deed to Agency") pursuant to which the Original Company transferred the Land to the Agency; (B) the Original Company and the Agency executed and delivered a certain payment in lieu of tax agreement dated February 5, 2002 (the "Original PILOT Agreement") by and between the Agency and the Original Company, pursuant to which the Original Company agreed to pay certain payments in lieu of taxes with respect to the Facility; (C) the Agency filed with the assessor and mailed to the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) 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 Facility under Section 412-a of the Real Property Tax Law) (the "Real Property Tax Exemption Form") relating to the Facility and the PILOT Agreement; (D) the Agency executed and delivered to the Original Company a sales tax exemption letter (the "Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance and (E) the Agency filed with the New York State Department of Taxation and Finance the form entitled "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report"); and

WHEREAS, in February, 2022, the Company acquired the Original Company, including the Original Company's interest in the Facility, and, in connection with such acquisition, the rights and obligations of the Original Company under the Agency Documents (as defined in the Original Lease Agreement) have been assumed by the Company; and

WHEREAS, pursuant to Section 3(b) of the Original PILOT Agreement, the Company is required to make certain payments in lieu of taxes (the "PILOT Payments") to the Agency on behalf of the Taxing Entities (as defined in the Original PILOT Agreement) on January 1 and September 30 of each year during the term of the Original PILOT Agreement; and

WHEREAS, on or about September 30, 2023, the Company made the last scheduled PILOT Payment to the Agency pursuant to the terms of the Original PILOT Agreement; and

WHEREAS, pursuant to Section 5.2(b) of the Original Lease Agreement, the leasehold estate created by the Original Lease Agreement is scheduled to terminate on June 30, 2024 (the “Original Lease Term”); and

WHEREAS, the Agency has received a request from the Company (the “Request”) dated November 8, 2023, which Request (A) described the Company’s intention to undertake a project (the “Proposed Project”) at the Facility, which Proposed Project would include new investments and capital improvements to the Facility, and (B) requested that the Agency extend the Original Lease Term, and, in connection with such extension, the Company proposed to make PILOT Payments during the term of such extension (the “Modification”); and

WHEREAS, pursuant to the Request, and in order to implement the Modification, the Company requested that the Agency enter into certain documents (collectively, the “Modification Documents”) to modify the terms of the Agency Documents, including (A) a first amendment to lease agreement (the “First Amendment to Lease Agreement”), and (B) a first amendment to payment in lieu of tax agreement (the “First Amendment to PILOT Agreement”), each dated as of December 1, 2023 by and between the Agency and the Company; and

WHEREAS, by resolution adopted by the members of the Agency on December 19, 2023 (the “Modification Resolution”), the Agency approved the Request and authorized the execution and delivery of the Modification Documents; and

WHEREAS, further pursuant to the Modification Resolution, and 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”), the Agency determined that the Modification, and the execution and delivery of the Modification Documents, constitute a “Type II action” pursuant to 6 NYCRR 617.5(c)(27), and therefor that, pursuant to 6 NYCRR 617.6(1)(i), the Agency has no further responsibilities under SEQRA with respect to the Modification; and

WHEREAS, all things necessary to constitute this First Amendment to PILOT Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this First Amendment to PILOT Agreement have in all respects been duly authorized by the Agency and the Company;

NOW, THEREFORE, for good and valuable consideration, the parties hereto agree as follows:

SECTION 1. ADDITIONAL REPRESENTATIONS BY THE AGENCY. The Agency does hereby represent, warrant and covenant as follows:

(A) Except as modified by this First Amendment to PILOT Agreement, the Agency confirms, as of the date hereof, the representations set forth in Section 1(b) of the Original PILOT Agreement.

(B) The Agency further represents that (1) the Agency has the power under the Act to enter into the transactions contemplated by the Modification Documents to be executed by the Agency, (2) the Agency has not received notice that it is in default under the Agency Documents or the Modification Documents, and (3) the Agency has duly authorized the execution, delivery and performance of the Modification Documents to be executed by the Agency.

SECTION 2. REPRESENTATIONS OF AND WARRANTIES BY THE COMPANY. The Company does hereby represent, warrant and covenant as follows:

(A) Power. The Company is a limited liability company duly organized and validly existing under the laws of the State of New York, is duly authorized to do business in the State of New York and has the power under the laws of the State to enter into this First Amendment to PILOT Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this First Amendment to PILOT Agreement.

(B) Authorization. The Company is authorized and has the power under its articles of organization and its operating agreement to enter into this First Amendment to PILOT Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this First Amendment to PILOT Agreement. By proper action of its members, the Company has duly authorized the execution, delivery and performance of this First Amendment to PILOT Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Company is not prohibited from entering into this First Amendment to PILOT Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this First Amendment to PILOT Agreement by (and the execution, delivery and performance of this First Amendment to PILOT Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this First Amendment to PILOT Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its articles of organization or its operating agreement or any other restriction, law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and neither the Company's entering into this First Amendment to PILOT Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this First Amendment to PILOT Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any of the foregoing, and this First Amendment to PILOT Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(D) Governmental Consent. No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this First Amendment to PILOT Agreement by the Company or as a condition to the validity of this First Amendment to PILOT Agreement.

(E) Except as modified by this First Amendment to PILOT Agreement, the Company ratifies and confirms, as of the date hereof, the representations set forth by the Original Company in Section 1(a) of the Original PILOT Agreement that apply to the Company as successor to the Original Company.

(F) The Company further represents that (1) the Company has the power to enter into the transactions contemplated by the Modification Documents to be executed by the Company, (2) the Company has not received notice that it is in default under the Agency Documents or the Modification

Documents, and (3) the Company has duly authorized the execution, delivery and performance of the Modification Documents to be executed by the Company.

SECTION 3. AMENDMENTS TO ORIGINAL PAYMENT IN LIEU OF TAX AGREEMENT. The Original PILOT Agreement is hereby amended as follows:

(A) The Agency and the Company agree that the “Schedule of PILOT Payments” used in determining the amount of payments in lieu of taxes (the “PILOT Payments”) payable by the Company under Section 3(b) of the Original PILOT Agreement is deleted in its entirety and in lieu thereof there is substituted the table set forth on Exhibit A to this First Amendment to PILOT Agreement.

(B) Section 3(c) of the Original PILOT Agreement shall be amended to read as follows:

“Payments after December 31, 2025. Beginning in 2026 and thereafter for so long as the Facility is owned by the Agency, the January and September PILOT Payments shall be equal to the product of the then current assessed value of the Facility as provided for in and established pursuant to RPTL Section 520 or any other applicable law, and (taking into account any exemption available under applicable law) as determined by the Town, multiplied by the then current applicable tax rates for the applicable Taxing Entities.”

(C) Section 5(a) of the Original PILOT Agreement shall be amended to read as follows:

“5. **Credit for Taxes Paid.**

(a) The parties agree that should the Company pay in any calendar year to any Taxing Entity any amounts in the nature of general property taxes, general assessments, service charges or other general governmental charges of a similar nature levied and/or assessed upon the Facility or the interest therein of the Company or the occupancy thereof by the Company (but no including (i) sales and use taxes, and (ii) special assessments of any nature, special ad valorem charges of any nature or governmental charges in the nature of utility charges, including, but not limited to, water, solid waste, sewage treatment or sewer or other rents, rates and charges), then the Company’s obligation hereunder to make PILOT Payments in such calendar year shall be reduced by the amounts which the Company shall have so paid or be obligated to pay to such Taxing Entity in such calendar year. If the Company desires to claim a credit against any particular PILOT Payment due hereunder, the Company shall give the governing body of the affected Taxing Entity and the Agency prior written notice of its intention to claim any credit pursuant to the provisions of this Paragraph 5, such notice to be given by the Company at least 10 days prior to the final date on which such PILOT Payment is due pursuant to the provisions of Paragraph 3.”

(D) Section 15 of the Original PILOT Agreement shall be amended to read as follows:

“Notices. All notices, certificates, and other communications hereunder shall be in writing and shall be either delivered personally or sent by certified mail, postage prepaid, return receipt requested, addressed as follows or to such other address as any party may specify in writing to the other:

IF TO THE COMPANY

GB II New York, LLC
c/o Eastern Generation LLC
300 Atlantic Street, 5th Floor
Stamford, Connecticut 06901
Attention: Richard Brunson,
Senior Vice President and Controller

WITH A COPY TO:

Barclay Damon LLP
125 E. Jefferson Street
Syracuse, New York 13202
Attention: Matthew S. Moses, Esq.

IF TO THE AGENCY:

Town of Bethlehem Industrial Development Agency
445 Delaware Avenue
Delmar, New York 12054
Attention: Chair

WITH COPIES TO:

Town of Bethlehem Industrial Development Agency
445 Delaware Avenue
Delmar, New York 12054
Attention: Catherine M. Hedgeman, Agency CEO and Agency Counsel

Hodgson Russ LLP
677 Broadway, Suite 401
Albany, New York 12207
Attention: A. Joseph Scott, III, Esq.”

(D) Section 22 of the Original PILOT Agreement shall be amended to add the following additional definitions:

“Agency Documents” shall have the meaning ascribed to such term in the Lease Agreement.

“Agreement” means the Original PILOT Agreement, as amended by the First Amendment to PILOT Agreement, as said Agreement may be further amended or supplemented from time to time

“Company” means GB II New York, LLC, as successor to the Original Company, a limited liability company duly organized and validly existing under the laws of the State of New York, and its successors and assigns.

“First Amendment to PILOT Agreement” means the first amendment to payment in lieu of tax agreement dated as of December 1, 2023 by and between the Agency and the Company.

“Original PILOT Agreement” means the payment in lieu of tax agreement dated February 5, 2002 by and between the Agency and the Company.

“Original Company” means PSEG Power New York Inc., a corporation, as of the Closing Date, duly organized and validly existing under the laws of the State of Delaware and authorized to do business in the State of New York, and its successors and assigns.

SECTION 4. PROVISIONS OF FIRST AMENDMENT TO PAYMENT IN LIEU OF TAX AGREEMENT CONSTRUED WITH ORIGINAL PAYMENT IN LIEU OF TAX AGREEMENT. All of the covenants, agreements and provisions of this First Amendment to PILOT Agreement shall be deemed to be and construed as part of the Original PILOT Agreement and vice versa to the same extent as if fully set forth verbatim therein and herein. In the event of any conflict or inconsistency between any covenant, agreement or provision contained in this First Amendment to PILOT Agreement and any covenant, agreement or provision contained in the Original PILOT Agreement, the covenant, agreement or provision contained herein shall govern.

SECTION 5. ORIGINAL PAYMENT IN LIEU OF TAX AGREEMENT AS AMENDED TO REMAIN IN EFFECT. Except as amended by this First Amendment to PILOT Agreement, the Original PILOT Agreement shall remain in full force and effect and the terms and conditions thereof are hereby confirmed.

SECTION 6. EXECUTION OF COUNTERPARTS. This First Amendment to PILOT Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 7. EFFECTIVE DATE OF FIRST AMENDMENT TO PAYMENT IN LIEU OF TAX AGREEMENT. This First Amendment to PILOT Agreement shall be effective as of December 1, 2023.

[Remainder of page left blank intentionally]

IN WITNESS WHEREOF, the parties have caused this First Amendment to PILOT Agreement to be duly executed in their respective names by their respective authorized officers or representatives thereof, all as of the day and date first above written.

TOWN OF BETHLEHEM INDUSTRIAL
DEVELOPMENT AGENCY

BY: 
(Vice) Chair

GB II NEW YORK, LLC

BY: _____
Authorized Officer

IN WITNESS WHEREOF, the parties have caused this First Amendment to PILOT Agreement to be duly executed in their respective names by their respective authorized officers or representatives thereof, all as of the day and date first above written.

TOWN OF BETHLEHEM INDUSTRIAL
DEVELOPMENT AGENCY


BY: _____
(Vice) Chair

GB II NEW YORK, LLC

BY: *Richard Brunson*
Authorized Officer
RICHARD BRUNSON
SVP + CONTROLLER

STATE OF NEW YORK)
 :SS.
COUNTY OF ALBANY)

On the 19th day of December, in the year 2023, before me, the undersigned, personally appeared VICTORIA STORRS, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

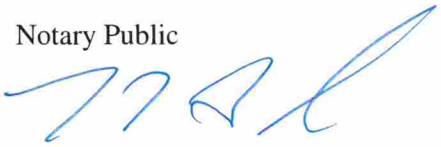
Notary Public 

A. Joseph Scott, III
Notary Public, State of New York
Qualified in Albany County
No. 02SC4811591
Commission Expires December 31, 2026

STATE OF CONNECTICUT)
)ss:
COUNTY OF FAIRFIELD)

RICHARDS

On the 21 day of December, in the year 2023, before me, the undersigned, personally appeared BRUNSON, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public


LIAM T. BAKER
NOTARY PUBLIC OF CONNECTICUT
My Commission Expires 12/31/2024

EXHIBIT A

REVISED SCHEDULE OF PILOT PAYMENTS

Calendar Year	County/Town PILOT Payments	School District PILOT Payments	Total
<u>COMPLETED PILOT PAYMENTS</u>			
2003	\$800,000	\$3,200,000	\$4,000,000
2004	\$575,000	\$2,300,000	\$2,875,000
2005	\$589,375	\$2,357,000	\$2,946,875
2006	\$604,109	\$2,416,438	\$3,020,547
2007	\$619,212	\$2,476,849	\$3,096,061
2008	\$634,692	\$2,538,770	\$3,173,462
2009	\$650,560	\$2,602,239	\$3,252,799
2010	\$666,824	\$2,667,295	\$3,334,119
2011	\$683,494	\$2,733,978	\$3,417,472
2012	\$700,582	\$2,802,326	\$3,502,908
2013	\$718,096	\$2,872,385	\$3,590,481
2014	\$736,049	\$2,944,194	\$3,680,243
2015	\$754,450	\$3,017,799	\$3,772,249
2016	\$773,311	\$3,093,244	\$3,866,555
2017	\$792,644	\$3,170,575	\$3,963,219
2018	\$812,460	\$3,249,840	\$4,062,300
2019	\$832,771	\$3,331,086	\$4,163,857
2020	\$853,591	\$3,414,363	\$4,267,954
2021	\$874,931	\$3,499,722	\$4,374,653
2022	\$896,804	\$3,587,215	\$4,484,019
2023	\$919,224	\$3,676,895	\$4,596,119
<u>EXTENDED PILOT PAYMENTS¹</u>			
2024	\$919,224	\$3,676,895	\$4,596,119
2025	\$919,224	Normal Taxes	To be determined.

¹ The Extended PILOT Payments shall be due (a) on January 1, 2024 and January 1, 2025 with respect to the County/Town PILOT Payments then due, and (b) September 30, 2024 with respect to the School District PILOT Payment.