
PAYMENT IN LIEU OF TAX AGREEMENT

BETWEEN

CITY OF COHOES INDUSTRIAL DEVELOPMENT AGENCY

AND

ERIE BOULEVARD HYDROPOWER, LP

DATED AS OF DECEMBER 31, 2001

Property Location:

6 School Street
City of Cohoes, Albany County, New York

PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT dated as of December 31, 2001 by and between CITY OF COHOES INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation organized and existing under the laws of the State of New York (hereinafter referred to as the "Agency"), having an office for the transaction of business located at 97 Mohawk Street, Cohoes, New York 12047-2897, and ERIE BOULEVARD HYDROPOWER, LP, a limited partnership organized and existing under the laws of the State of New York having an office for the transaction of business located at c/o Orion Power New York, 225 Greenfield Parkway, Suite 221, Liverpool, New York 13088 (hereinafter referred to as the "Company").

WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, being Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of the State of New York, as amended (hereinafter referred to as the "Enabling Act") authorized the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish real and personal property, whether or not now in existence of 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 of New York and improve their recreation opportunities, prosperity and standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease or sell its projects, to charge and collect rent therefor, to mortgage any and all of its facilities and to enter into an agreement which includes provisions such as those contained herein (this PILOT Agreement being hereinafter referred to as the "PILOT Agreement"); and

WHEREAS, the Agency intends to acquire a leasehold interest in certain real property more particularly described in Exhibit "A" attached hereto and the improvements located thereon pursuant to the terms and conditions of a certain ground lease (the "Ground Lease") to be executed between the Company, as Lessor, and the Agency, as Lessee (the "Project"); and

WHEREAS, the Project constitutes a "project" within the meaning of the Act; and

WHEREAS, the Agency proposes to sublease the Project to the Company pursuant to the terms and conditions of a certain sublease agreement (the "Sublease Agreement") to be executed, between the Agency, as sublessor, and the Company, as sublessee; and

WHEREAS, said Project is to be used for any legal purpose under the Act; and

WHEREAS, the Project is located within the boundaries of the City of Cohoes; 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 (the "RPTL"), the Agency is not required to pay Real Estate Taxes (hereinafter defined) upon any of the property acquired by it or under its jurisdiction or supervision or control; and

WHEREAS, the Agency has expressed its reluctance to enter into the Ground Lease unless the Company shall agree to make payments in lieu of Real Estate Taxes ("PILOT Payments") pursuant to the PILOT Agreement with respect to the Project, and the City of Cohoes (the "City"), the County of Albany (the "County") and the City of Cohoes School District (the "School District") (collectively, the "Municipalities") relied on future receipt of Real Estate Taxes; and

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

WHEREAS, this Agreement deviates from the Policy, has been approved by the Agency after the notice and hearing required by the Act; and

WHEREAS, this Agreement deviates from the provisions of paragraph (15) of Section 858 of the General Municipal Law of the State of New York and such deviation must be approved in writing by the Municipalities; and

WHEREAS, the PILOT Payments contemplated by this PILOT Agreement are in lieu of Real Estate Taxes which may be payable with respect to the Project during the term of this PILOT Agreement; and

WHEREAS, the Company is desirous that the Agency enter into the Ground Lease and the Sublease Agreement, and the Company is willing to enter into this PILOT Agreement in order to induce the Agency to enter into the Ground Lease and the Sublease Agreement;

NOW, THEREFORE, in consideration of the matters above recited, for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties hereto formally covenant, agree and bind themselves as follows to wit:

ARTICLE I

REPRESENTATIONS AND WARRANTIES

SECTION 1.1. Representations, Warranties by Agency.

The Agency does hereby represent and warrant as follows:

(a) Existence and Power. The Agency has been duly established under the provisions of the Act, has duly adopted a resolution dated December 31, 2001 that authorizes the transactions contemplated by this PILOT Agreement in accordance with the Act and has the power to enter into

the transactions contemplated by this PILOT Agreement and to carry out its obligations and exercise its rights hereunder.

(b) Further Assurances. The Agency and the Company will execute, acknowledge and deliver at the sole cost and expense of the Company, all such further leases, deeds, conveyances, mortgages, assignments, estoppel certificates, notices or assignments, transfers, assurances and other agreements as the Municipalities may reasonably require from time to time in order to give further affect to this PILOT Agreement.

(c) Intentions. The Company intends to lease the Project to the Agency pursuant to the provisions of the Ground Lease and the Agency intends to sublease the Project to the Company pursuant to the Sublease Agreement.

(d) Authorization. The Agency is authorized and has the corporate power and authority under the Act, its by-laws and the laws of the State of New York to enter into this PILOT Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this PILOT Agreement. By proper corporate action on the part of its members and without the need for any other actions or consents, the Agency has duly authorized the execution, delivery and performance of this PILOT Agreement and the consummation of the transactions herein contemplated.

(e) Validity. The Agency is not prohibited from entering into this PILOT Agreement and performing all covenants and obligations on its part to be performed under and pursuant to this PILOT Agreement by the terms, conditions or provisions of the Act, any other law, any order of any court or other agency or agreement to which the Agency is a party or by which the Agency is bound and this PILOT Agreement is the legal, valid and binding obligation of the Agency, enforceable against the Agency in accordance with its terms. There are no actions, suits or proceedings pending, or to the best knowledge of the Agency, threatened against the Agency, relating to or before any court or other agency or governmental authority.

SECTION 1.2. Representations, Warranties by Company.

The Company does hereby represent and warrant as follows:

(a) Power. Company is duly organized and validly existing under the laws of the State of New York, and by proper action has been duly authorized to execute, deliver and perform this PILOT Agreement.

(b) Authorization. The Company is authorized and has the power under the laws of the State of New York to enter into this 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 PILOT Agreement. The Company has duly authorized the execution, delivery and performance of this PILOT Agreement and the consummation of the transactions herein contemplated. The Company is not prohibited from entering into this PILOT Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this PILOT Agreement and the execution, delivery and performance of this PILOT

Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this PILOT Agreement will not conflict with or violate or constitute a breach of or a default under the terms, conditions or provisions of its partnership agreement, or any law, rule, regulation or order of any court or other agency or authority or government, or any contractual limitation, restriction or 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 any of its property is bound, and the Company discharging and performing all covenants and obligations on its part to be performed under and pursuant to this PILOT Agreement will not 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 or any lien of any nature of the foregoing, and this PILOT Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms.

(c) The Company has not used Hazardous Materials (as defined in the Environmental Compliance, License Compliance and Indemnification Agreement dated as of December 31, 2001 by the Company in favor of the Agency), asbestos, petroleum or petroleum by-products on, from, or affecting the Project in any manner which violates federal, state or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, asbestos, petroleum or petroleum by-products, and to the best of the Company's knowledge, no prior tenant or prior sub-tenant, have used Hazardous Materials, asbestos, petroleum or petroleum by-products on, from or affecting the Project in any manner which violates Federal, state or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, asbestos, petroleum or petroleum by-products.

(d) The Company shall not cause or permit the Project or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, asbestos, petroleum or petroleum by-products, except in compliance with all applicable federal, State and local environmental laws or regulations ("environmental laws"), nor shall the Company cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company or any tenant or sub-tenant, a release of Hazardous Materials, asbestos, petroleum or petroleum by-products onto the Project or onto any other property in violation of any environmental laws.

Section 2.01. Tax Exempt Status of Project.

(a) Assessment of Project. Pursuant to Section 874 of the General Municipal Law and Section 412-a of the Real Property Tax Law, the parties hereto understand that, upon acquisition of the leasehold interest in the Project by the Agency, and continuing for the period during which the Agency maintains such leasehold interest to the Project, the Project shall be assessed as exempt upon the assessment rolls of the Municipalities, prepared subsequent to the acquisition by the Agency of leasehold interest in the Project, except for Special Levies (hereinafter defined). The parties hereto understand that the Project shall be entitled to such exempt status on the tax rolls of the Municipalities from the first taxable status date following (i) the Agency's acquisition of the leasehold interest in the Project and (ii) the completion and submission of all necessary filings in

accordance with Section 412-a of the Real Property Tax Law of the State of New York, in connection therewith. It is the intent of this PILOT Agreement that the Company shall, at all times during its or the Agency's ownership of the Project, be obligated to pay either PILOT Payments or Real Estate Taxes, and that the foregoing obligations shall not be duplicative of each other or otherwise be additive.

(b) To the extent the Project or any portion thereof is declared to be subject to taxation or assessment by a final judgment of a court of competent jurisdiction, an amendment to the Act, or other legislative or administrative change, the obligation of the Company to make PILOT Payments hereunder shall, to such extent only, be replaced by the obligation of the Company to pay Real Estate Taxes. To the extent that the foregoing declaration of non-exemption is given retroactive effect, any PILOT Payments previously made by the Company during such retroactive period shall be credited against Real Estate Taxes due for such period. Nothing herein contained shall prohibit the Company from contesting the validity or constitutionality of any such amendment, legislative or administrative change or judicial decision.

(c) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the General Municipal Law and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from certain special assessments and special ad valorem levies. During the period of the exemption, the Company shall pay service charges, special ad valorem levies, special assessments and improvement district charges or similar tax equivalents which are or would be levied upon or with respect to the Project by the Municipalities if the Project Facility were owned by the Company and the Agency had no interest in the Project Facility.

(d) Counsel Fees. The Company expressly covenants and agrees to pay in full the reasonable fees and expenses of the Municipalities, or any of their subdivisions's counsel, promptly upon receipt of the statement therefor, which are incurred after the date hereof and which fees and expenses arise in connection with the enforcement of this PILOT Agreement. If any claim is brought by a third party against the Agency and/or a Municipality with respect to any matter related to this PILOT Agreement (only if such claim is the result of the Company's breach related to this PILOT Agreement), the Company shall defend the Agency and/or the Municipalities against such claim with counsel reasonably acceptable to the Agency and/or the Municipalities. Notwithstanding the foregoing, the Company shall not be required to pay fees and expenses of counsel with respect to a claim made against the Agency or the Municipalities by the Company, unless the Agency or the Municipalities is or are, respectively, the prevailing party in such action.

Section 2.02. Payments in Lieu of Taxes.

(a) Agreement to Make Payments. The Company agrees that it shall make PILOT Payments in lieu of Real Estate Taxes. The Company shall make PILOT Payments on or before May 1 of each year as specified in Schedule A. Such payments shall be made directly to the Agency unless the Agency shall have directed the Company in writing not less than thirty (30) days prior to a scheduled payment date to make such payment to the Municipalities. The Agency will forward all PILOT payments to the municipalities within ten (10) business days of receipt thereof.

In the event that this PILOT Agreement is not executed by each of the Municipalities on or before April 1, 2002, the PILOT payment specified in the Column labeled "Annual PILOT" in Schedule A shall be allocated among the Municipalities in proportion to the amount of real property tax and other taxes which would have been received by each Municipality had the Project Facility not been tax exempt due to the status of the Agency.

(b) Adjustment to Schedule A. In addition to the payment schedule set forth on Schedule A, if in any year during the term of this Agreement, the annual average locational based market price in the State of New York ("LBMP") as recorded by the New York State Independent System Operators shall exceed \$57.50 per megawatt hour, the amount due under this Agreement shall increase by \$25,000 per year for each \$2.50 increase in the LBMP per megawatt hour over the Base Rate as Adjusted. For purposes of this Agreement, the term Base Rate as Adjusted shall mean the \$57.50 base adjusted by the increase during the term of this Agreement (using 2002 as the base year) in the U.S. Department of Labor Consumer Price Index for Urban Consumers for New York, Northern New Jersey, Long Island (1982-1984 =100).

(c) Empire Zone Qualification. The Company shall be obligated to make the payments set forth in Schedule A irrespective of the continued existence of the credit for eligible real property taxes available pursuant to Section 15 of the Tax Law of the State of New York, or any successor thereto, or the certification of the Company, its successors or assigns as a Qualified Empire Zone Enterprise (as such term is defined in Section 14 of the Tax Law of the State of New York) at this location.

(d) Interest and Penalties. In the event the Company shall fail to make any such installments of PILOT Payments, the amount or amounts so in default shall continue as an obligation of the Company until fully paid, and the Company agrees to pay the same to the Municipalities. The Company shall pay a late payment penalty of five (5%) percent of any amount which is not paid within ten (10) days after written notice from the Agency to the Company. In addition, for each month or part thereof that a payment under this Section 2.02 is delinquent beyond the first month, interest shall accrue and be payable by the Company on the total amount due as provided above plus a late payment penalty in the amount of one (1 %) percent per month for each month or part thereof until the payment is made.

(e) Survival of Obligations. The obligations of the Company under this Section 2.02 shall survive the termination or expiration of this PILOT Agreement for any reason whatsoever.

(f) Additions. It is understood and agreed that the Company may make changes and additions to the Project Facility during the term of this Agreement, which changes may include improvements identified within the Federal Energy Regulatory Commission re-licensing process and/or the construction of additional electrical generation facilities. In no event will the construction, of any additional improvements or the modification or alteration of the existing Facility cause an increase in the amount of the annual payment required under this Agreement.

Section 2.03. Taxes, Assessments and Charges. The Company shall pay when the same shall become due all taxes and assessments, general and specific, if any, levied and assessed upon or against the Project, this PILOT Agreement, any estate or interest of the Agency or the Company in

the Project, or the rentals hereunder during the term of this PILOT Agreement, and all water and sewer charges, special district charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, and charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of the Project all of which are herein called "Impositions". The Agency shall promptly forward to the Company any notice, bill or other statement received by the Agency concerning any Imposition. The Company may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance.

Within fifteen (15) days after entering into the Ground Lease, the Agency shall deliver a copy of this PILOT Agreement to each of the County, the City and the School District, and prior to the applicable tax status date for each affected taxing jurisdiction, make application (on Form EA-412-a) for the real property tax exemption for the Project and file same in the office of each applicable tax assessor (a copy of which application shall also be delivered to the chief elected official of each taxing jurisdiction which the Project is located).

Section 2.04. Agreement to Provide Information.

The Company agrees to furnish to the Agency, pursuant to the Ground Lease, such information with respect to the Project as the Agency may reasonably require.

Section 2.05. Assignability by the Company.

Notwithstanding anything herein to the contrary, the Company shall not assign this PILOT Agreement without the prior written consent of the Agency.

ARTICLE III

LIMITED OBLIGATION OF THE PARTIES

Section 3.01. No Recourse; Limited Obligation of the Agency.

(a) No Recourse. All covenants, stipulations, promises, agreements and obligations of the Agency contained in this PILOT Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency and not of any member, officer, agent, servant or employee of the Agency in his or her individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this PILOT Agreement, or otherwise based or in respect of this PILOT Agreement, or for any claim based thereon or otherwise in respect of this PILOT Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, agent, servant or employee, as such, of the Agency, the County, the City, the School District or any successor public benefit corporation or political subdivision or any person executing this PILOT Agreement on behalf of the Agency. It is expressly understood that this PILOT Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, officer, agent, servant or employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this PILOT Agreement under or by reason of the obligations,

covenants or agreements contained in this PILOT Agreement or implied therefrom. Any and all such personal liability of, and any and all such rights and claims against, every such member, officer, agent, servant or employee under or be reason of the obligations, covenants or agreements contained in this PILOT Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this PILOT Agreement.

(b) Limited Obligation. The obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or the City of Cohoes, New York, and neither the State of New York nor the City of Cohoes, New York shall be liable thereon. Furthermore, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from this PILOT Agreement or the Sublease Agreement.

(c) Further Limitation. Notwithstanding any provision of the PILOT Agreement to the contrary, (i) the Agency shall not be obligated to take any action pursuant to any provision hereof unless the Agency shall have been requested to do so in writing by the Company and (ii) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any of its members, officer, agents, servants or employees) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity satisfactory to the Agency for protection against all such liability, and for reimbursement of all such fees, expenses and other costs.

ARTICLE IV

EVENTS OF DEFAULT

Section 4.01. Events of Default.

The terms "Event of Default" or "Default" shall mean, whenever they are used in this PILOT Agreement, any failure of the Company to pay any amount due and payable by it pursuant to this PILOT Agreement within ten (10) days after its receipt of notice from the Agency that such amount is due and has not been paid (provided due notice of such amounts owing shall have been given previously as provided in Section 2.02(d) above), it being understood that an "Event of Default" shall not have occurred hereunder until such time as the applicable notice and cure periods under Section 4.02 shall have expired.

Section 4.02. Rights of the Mortgagees.

For the purposes of this PILOT Agreement, the term "Mortgage" shall include any mortgage, leasehold mortgage, purchase money mortgage or other security instrument or instruments secured by the Project and used in the jurisdiction in which the Project is located, such as, without limitation, mortgages, deeds of trust, mortgage deeds, security deeds and conditional deeds, as well as financing statements, assignments of leases, rents and/or profits, security agreements and other documentation which a lender may require, and the terms "Holder of a Mortgage" and "Mortgagee" shall mean the

secured party under any of the foregoing instruments or the prospective secured party if the instruments have not been delivered.

If the Company, with respect to all or a portion of the Project and/or the Company's successors and assigns, shall mortgage or grant a security interest in the Project, and if the Mortgagee shall send to the Agency (pursuant to the notice provisions of Section 5.06 herein) a true copy of its mortgage, together with written notice specifying the name and address of the mortgagee, so long as such mortgage shall remain unsatisfied of record or until written notice of satisfaction is given by the holder to the Agency, the following provisions shall apply (in respect of such mortgage and of any other mortgages which also comply with the above):

(a) The Agency shall, upon receipt of any notice or other communication, whether of default or any other matter, simultaneously serve a copy of such notice upon the Mortgagee, and no such notice or other communication to the Company shall be deemed received unless a copy is so served upon the Mortgagee in the manner provided in this PILOT Agreement for the giving of notices.

(b) Notwithstanding anything to the contrary herein, if the Agency serves a notice of default upon the Company, it shall also serve a copy of such notice upon any Mortgagee (provided the Agency has been given prior written notice of such mortgagee, together with its address for service).

(c) In the event of any default by the Company under this PILOT Agreement, the Mortgagee shall have twenty (20) days for a monetary default and forty-five (45) days in the case of any other default, after notice to the Mortgagee of such default (which notice shall be given in the manner set forth in Section 5.06 below) to cure or to cause to be cured the default complained of and the Agency shall accept such performance by or at the instigation of such Mortgagee as if same had been done by the Company. Each notice of default given by the Agency will state the amounts of any payments herein provided that are then claimed to be in default.

(d) If, before the expiration of Mortgagee's cure period as provided in paragraph (d) above, such Mortgagee shall have notified the Agency in writing of its agreement to pay or cause to be paid within ten (10) days of expiration of Mortgagee's cure period, all payments in this PILOT Agreement provided for and then in default, and/or, in the case of non-monetary defaults, shall have agreed to commence or cause to be commenced the work of complying with all of the other requirements of this PILOT Agreement, if any are then in default (other than defaults which by their nature cannot be cured), and shall prosecute or cause the prosecution of same to completion with reasonable diligence (collectively, the "extended cure period"), then the Agency may not exercise any of their respective rights and remedies hereunder until expiration of the extended cure period.

(e) The Mortgagee shall be given notice by the Company of any arbitration or other proceeding or dispute by or between the parties hereto, and shall have the right to intervene therein and be made a party to any such arbitration or other proceeding. In any event, the Mortgagee shall have the right to receive notice from the Company of, and a copy of, any award or decision made in said arbitration or other proceeding, whether or not the Mortgagee intervened or became a party.

(f) Except where the Mortgagee has succeeded to the interest of the Company in the Project, no liability for any payments to be made pursuant to this PILOT Agreement or the performance of any of the Company covenants and agreements under this PILOT Agreement shall attach to or be imposed upon the Mortgagee, and if the Mortgagee or its nominee or designee succeeds to the interest of the Company in the Project, all of the obligations and liabilities of the Mortgagee or its nominee or designee shall be subject to the limitations of liability set forth in Article III hereof and shall cease and terminate upon assignment of the PILOT Agreement or abandonment of the Project.

(g) No payment made by the Mortgagee shall constitute an agreement that such payment was, in fact, due under the terms of this PILOT Agreement; and the Mortgagee having made any payment to the Agency pursuant to the Agency's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof, provided it shall have made demand therefor not later than one year after the date of such payment.

(h) Any Mortgagee under this Rights of the Mortgagee section agrees that any obligation of the Agency created under this Section is and shall be subject to the Ground Lease.

Section 4.03. Remedies on Company's Default.

Subject to the rights of the Mortgagees set forth herein, whenever any Event of Default under Section 4.01 shall have occurred and be continuing with respect to this PILOT Agreement, remedies of the Agency shall be limited to the rights under the PILOT Mortgage, subject to the rights of Mortgagees set forth in Section 4.02 hereof.

Section 4.04. Payment of Attorney's Fees and Expenses.

If the Company should default performing any of its obligations, covenants and agreements under this PILOT Agreement, and the Agency or the Municipalities should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement or performance or observance of any obligation or agreement on the part of the Company herein, the Company agrees that it will, on demand therefore, pay to the Agency or the Municipalities as the case may be, the reasonable fees and disbursements of such attorneys and such other reasonable expenses so incurred in connection with the exercise of the remedies provided for herein.

Section 4.05. Remedies: Waiver and Notice.

(a) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(b) Notice Not Required. In order to entitle the Agency to exercise any remedy reserved to it in this PILOT Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this PILOT Agreement.

(c) No Waiver. In the event any provision contained in this PILOT Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this PILOT Agreement shall be established by conduct, custom or course of dealing,

ARTICLE V

MISCELLANEOUS

Section 5.01. Term of PILOT Agreement.

This PILOT Agreement shall become effective and the obligation of the Company and the Agency shall arise absolutely and unconditionally upon the Company entering into the Ground Lease with the Agency for the Project, any contingencies to performance by Company thereunder having expired, been met or waived. This PILOT Agreement shall continue until the first date which all monetary and non-monetary obligations hereunder have been fully satisfied after the date on which the Agency's leasehold interest in the Project terminates.

Section 5.02. Form of Payments.

The amounts payable under this PILOT Agreement shall be payable by check in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

Section 5.03. Company Acts.

Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished by others with the same force and effect as if done or accomplished by the Company.

Section 5.04. Amendment of PILOT Agreement.

This PILOT Agreement may not be amended, changed, modified, altered or terminated, unless such amendment, change, modification, alteration or termination is in writing and signed by the Agency and the Company and their successors and assigns, if any.

Section 5.05. Agreement to Run with the Land.

Except as provided in Section 2.05 of this Agreement, this Agreement shall run with the land, both as respects benefits and burdens created herein, and shall be binding upon and inure to the benefit of the successors and assigns of the respective parties.

Section 5.06. Notices.

All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed received, served or noticed, as applicable, when delivered or mailed by United States registered or certified mail, postage prepaid, return receipt requested, to the Agency or the Company, addressed as follows:

(a) To the Agency:

City of Cohoes Industrial Development Agency
97 Mohawk Street
Cohoes, New York 12047-2897

To the Company:

Erie Boulevard Hydropower, LP
c/o Orion Power New York
225 Greenfield Parkway, Suite 221
Liverpool, New York 13088

The Agency and the Company may, by notice given hereunder to each of the others, designate any further or different addresses to which the subsequent notices, certificates or other communications to them shall be sent.

Section 5.07. Binding Effect.

This PILOT Agreement shall inure to the benefit of the Agency, the Municipalities and the Company, and shall be binding upon the Agency and the Company, and their respective successors and assigns as provided herein.

Section 5.08. Severability.

If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this PILOT Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this PILOT Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

Section 5.09. Counterparts.

This PILOT Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 5.10. Applicable Law.

This PILOT Agreement shall be governed by and construed in accordance with the laws of the State of New York.

Section 5.11. Estoppel Certificates.

The Agency, within ten (10) days after a request in writing by the Company or Mortgagee, shall furnish a written statement, duly acknowledged, that this PILOT Agreement is in full force and effect and that there are no defaults thereunder by the Company, or if there are any defaults, such statement shall specify the defaults the Agency and/or the Municipality claims exist. Such statement shall also contain any other information reasonably requested by the requesting party.

Section 5.13. Mortgagee.

The Mortgagee shall be a third party beneficiary of all the rights of the Company and the obligations of the Agency hereunder.

Nothing in this Section shall limit the rights of the City, the School District and the County under Section 5.14.

Section 5.14. City, School District and County as Third Party Beneficiaries.

The City, the School District and the County, each shall be a third party beneficiary of all of the obligations of the Company and of the rights and obligations of the Agency hereunder and the City, the School District and the County shall have the right to enforce their respective rights and remedies in their own names and without consent of the Agency. For purposes of the foregoing sentence, and without limitation, "obligations" shall include all covenants, representations and warranties of the respective parties. The Agency shall not be authorized to waive, modify or forgive any of the Company's obligations hereunder and any such acts by the Agency, without the prior written consent of the City, the School District and the County, shall not in any way affect the City's, the School District's and the County's rights hereunder.

IN WITNESS WHEREOF, the Agency and the Company have caused this PILOT Agreement to be executed in their respective names by their respective duly authorized officers and to be dated as of the date above written.

CITY OF COHOES INDUSTRIAL
DEVELOPMENT AGENCY

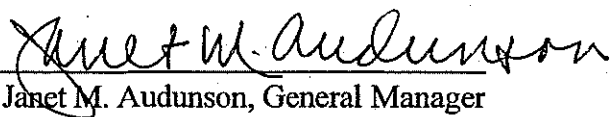
By: _____


(Vice) Chairperson

ERIE BOULEVARD HYDROPOWER, LP

By: Orion Power New York G.P., Inc., its
general partner

By: _____


Janet M. Audunson, General Manager

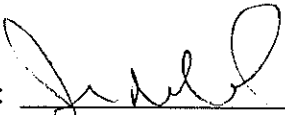
Agreed to this ____ day of _____, 200_:

COUNTY OF ALBANY

By: _____

Agreed to this 31st day of December, 2001:

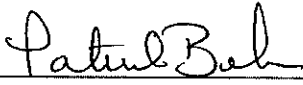
CITY OF COHOES

By: 

Mayor John McDonald

Agreed to this 25 day of January, 2002:

CITY SCHOOL DISTRICT OF THE
CITY OF COHOES

By: 

Patrick Butler
President, Board of Education

Schedule A

PILOT Payment Schedule

	Year	Annual PILOT	County (.0604)	City (.3535)	School District (.5861)
1	2002	1,200,000	72,480.00	424,200.00	703,320.00
2	2003	1,200,000	72,480.00	424,200.00	703,320.00
3	2004	1,200,000	72,480.00	424,200.00	703,320.00
4	2005	1,200,000	72,480.00	424,200.00	703,320.00
5	2006	1,200,000	72,480.00	424,200.00	703,320.00
6	2007	1,200,000	72,480.00	424,200.00	703,320.00
7	2008	1,200,000	72,480.00	424,200.00	703,320.00
8	2009	1,200,000	72,480.00	424,200.00	703,320.00
9	2010	1,200,000	72,480.00	424,200.00	703,320.00
10	2011	1,200,000	72,480.00	424,200.00	703,320.00
11	2012	1,224,000	73,929.60	432,684.00	717,386.40
12	2013	1,248,480	75,408.19	441,337.68	731,734.13
13	2014	1,273,450	76,916.38	450,164.57	746,369.05
14	2015	1,298,919	78,454.71	459,167.86	761,296.43
15	2016	1,324,897	80,023.78	468,351.09	776,522.13
16	2017	1,351,395	81,624.26	477,718.13	792,052.61
17	2018	1,378,423	83,256.75	487,272.53	807,893.72
18	2019	1,405,991	84,921.86	497,017.81	824,051.33
19	2020	1,434,111	86,620.30	506,958.24	840,532.46
20	2021	1,462,793	88,352.70	517,097.32	857,342.98

billed 2/11/17
 billed 2/28/17
 2/25/18
 2/25/19
 2/25/18
 2/22/16
 2/28/17
 2/28/18
 2/26/19
 2/28/20

EXHIBIT "A"

DESCRIPTION OF LAND

PROPERTY OF
ERIE BOULEVARD HYDROPOWER, LP
SCHOOL STREET DEVELOPMENT
MOHAWK RIVER PROJECT

Statements:

1. The State Plane Coordinates listed herein are referenced to the North American Datum of 1983 (NAD83) and projected on the New York State Plane Coordinate System (East Zone). State Plane Coordinates were established utilizing static GPS surveying techniques referenced to the North American Datum of 1983 (NAD83).
2. The parcel of land described herein is intended to be a portion of the same premises conveyed by the Niagara Mohawk Power Corporation to Erie Boulevard Hydropower, LP by deed dated July 30, 1999 and recorded in the Albany County Clerk's Office on August 4, 1999 in Liber 2636 of Deeds at Page 343.

PARCEL B

All that tract or parcel of land situate in the City of Cohoes, County of Albany, State of New York, and being more precisely described as follows:

Beginning at a point having coordinates of 1,441,393.1 North and 704,289.4 East;

thence through the lands of Erie Boulevard Hydropower, LP, the following courses and distances:

South 36 degrees 20 minutes 27 seconds West a distance of 142.69 feet to a point;

South 36 degrees 51 minutes 25 seconds East a distance of 445.05 feet to a point;

South 59 degrees 54 minutes 52 seconds East a distance of 160.13 feet to a point;

South 55 degrees 16 minutes 52 seconds East a distance of 147.18 feet to a point;

North 88 degrees 40 minutes 49 seconds East a distance of 60.47 feet to a point;

South 01 degrees 19 minutes 11 seconds East a distance of 7.50 feet to a point;

South 88 degrees 40 minutes 49 seconds West a distance of 107.15 feet to a point;

South 50 degrees 28 minutes 34 seconds West a distance of 43.66 feet to a point;

South 50 degrees 24 minutes 16 seconds East a distance of 351.29 feet to a point;
South 45 degrees 52 minutes 58 seconds West a distance of 433.07 feet to a point;
North 89 degrees 18 minutes 30 seconds West a distance of 167.54 feet to a point;
North 00 degrees 41 minutes 30 seconds East a distance of 6.58 feet to a point;
South 89 degrees 18 minutes 30 seconds West a distance of 158.00 feet to a point;
North 46 degrees 15 minutes 13 seconds West a distance of 162.70 feet to a point;
North 12 degrees 58 minutes 33 seconds West a distance of 47.00 feet to a point;
North 49 degrees 22 minutes 32 seconds West a distance of 182.77 feet to a point;
South 39 degrees 24 minutes 45 seconds West a distance of 80.35 feet to a point;
South 67 degrees 22 minutes 50 seconds West a distance of 50.32 feet to a point;
North 78 degrees 27 minutes 01 seconds West a distance of 108.76 feet to a point;
North 11 degrees 32 minutes 59 seconds East a distance of 10.00 feet to a point;
South 78 degrees 27 minutes 01 seconds East a distance of 95.00 feet to a point;
North 67 degrees 22 minutes 50 seconds East a distance of 64.89 feet to a point;
North 39 degrees 24 minutes 45 seconds East a distance of 62.36 feet a point;
North 62 degrees 45 minutes 11 seconds West a distance of 85.74 feet to a point;
North 23 degrees 09 minutes 03 seconds East a distance of 227.72 feet to a point;
North 46 degrees 35 minutes 16 seconds West a distance of 225.00 feet to a point;
North 30 degrees 05 minutes 08 seconds East a distance of 42.39 feet to a point;
North 36 degrees 51 minutes 25 seconds West a distance of 452.65 feet to a point;
North 53 degrees 39 minutes 33 seconds West a distance of 375.78 feet to a point;
North 36 degrees 20 minutes 27 seconds East a distance of 80.00 feet to a point;
South 53 degrees 39 minutes 33 seconds East a distance of 320.00 feet to a point;

North 36 degrees 20 minutes 27 seconds East a distance of 70.00 feet to a point;

South 53 degrees 39 minutes 33 seconds East a distance of 80.00 feet to the **Point of Beginning**.

To contain 3.58 acres of land, more or less, as surveyed by James S. Thew, Licensed Land Surveyor No. 050226.

The above described parcel of land is intended to encompass the existing intake structure and power house, and a proposed intake structure and penstock.

The above mentioned bearings are grid bearings referenced to NAD83 and projected on the New York State Plane Coordinate System (East Zone).

A map of the above-described parcel of land entitled "Map Showing a Portion of Lands of Erie Boulevard Hydropower, LP, School Street Development, Mohawk River Project, Empire Zone Parcel" was prepared by Thew Associates, PLLC, dated November 8, 2001 and is distinguished as Drawing No. CK2588-A-10-01.