

**MINUTES OF THE MEETING
OF THE
MEMBERSHIP OF THE
ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (ECIDA)**

DATE AND PLACE: November 20, 2019, at the Erie County Industrial Development Agency (the “ECIDA” or “Agency”), 95 Perry Street, 5th Floor ESD Conference Room, Buffalo, New York 14203

PRESENT: Denise Abbott, Hon. Joseph H. Emminger, Hon. Howard Johnson, Tyra Johnson, Richard Lipsitz, Jr., Brenda W. McDuffie, Hon. Glenn R. Nellis, Hon. Mark C. Poloncarz, Sister Denise Roche, Kenneth A. Schoetz and Art Wingerter

EXCUSED: Hon. Diane Benczkowski, Rev. Mark E. Blue, Hon. Bryon W. Brown, James F. Doherty, Dottie Gallagher, Hon. Brian J. Kulpa, Hon. Darius G. Pridgen and Charles F. Specht

OTHERS PRESENT: Steve Weathers, Chief Executive Officer; John Cappellino, Executive Vice President; Mollie Profic, Chief Financial Officer; and Karen M. Fiala, Assistant Treasurer/Secretary

GUESTS: Robert G. Murray, Esq., General Counsel/Harris Beach PLLC; Maria Whyte, Deputy County Executive; Andrew Federick, Erie County Senior Economic Development Specialist

There being a quorum present at 12:28 p.m., the meeting of the ECIDA Board of Directors was called to order by its Chair, Ms. McDuffie.

MINUTES

The minutes of the October 23, 2019 meeting of the members were presented. Sister Denise moved and Mr. Emminger seconded, to approve of the minutes. Ms. McDuffie called for the vote, and the minutes were then unanimously approved.

REPORTS/ACTION ITEMS/INFORMATION ITEMS

Financial Report. Ms. Profic presented the October 2019 financial report, noting that the balance sheet shows that the Agency finished the month with total assets of \$29.8 million and net assets of \$22.5 million. The monthly income statement reflects an operating deficit of \$63,000 for October. Operating revenue was under budget by about \$70,000, due largely to administrative fees. Operating expenses overall were also below the monthly budget by about \$7,000. After factoring in strategic initiatives and depreciation, there was an overall net loss of \$79,000 for the month. The year-to-date income statement shows operating revenue of \$1.8 million, being \$544,000 below budget for the year, and expenses of \$2.2 million, being

\$126,000 below budget. These plus special project grants net to an operating loss of \$429,000 through October. After strategic initiatives and depreciation, there is currently net income of \$392,000 for the year. Ms. McDuffie directed that the report be received and filed.

2019 Tax Incentive Induced/Closing Schedule/Backlog Report. Ms. Fiala presented this report. Ms. McDuffie directed that the report be received and filed.

Approval of a Resolution for a County Rail Lease/Agreement Operator. Mr. Cappellino reviewed the memorandum that was provided in the Board package. Mr. Poloncarz advised that he would be abstaining from the vote.

Mr. Emminger moved and Mr. Nellis seconded to approve of the Resolution for a County Rail Lease/Agreement Operator. Ms. McDuffie then called for the vote and the following resolution was approved with Mr. Poloncarz abstaining:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING: (1) THE EXTENSION OF A CERTAIN RAIL LINE LEASE AGREEMENT WITH THE COUNTY OF ERIE, AND (2) THE NEGOTIATION AND EXECUTION OF CERTAIN RAIL LINE OPERATING AGREEMENTS WITH EXISTING OPERATORS

Approval of a Resolution to Amend Regulatory Agreement for Affinity Sutton Place. Mr. Murray reviewed the memorandum that was provided in the Board package. Mr. Lipsitz moved and Ms. Abbott seconded to approve the resolution amending the declaration of restrictive covenants. Ms. McDuffie then called for the vote and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING, WITH REGARD TO THE 2003 AFFINITY SUTTON PLACE L.P. MULTIFAMILY HOUSING PROJECT, THE CONSENT TO AN AMENDMENT OF THE DECLARATION OF RESTRICTIVE COVENANTS, TOGETHER WITH THE NEGOTIATION, EXECUTION AND DELIVERY OF ALL RELATED DOCUMENTS

Policy Committee Update. Mr. Cappellino provided members with a review of the meeting, noting the Policy Committee approved both projects to be reviewed at today's Board meeting. Ms. McDuffie directed that the report be received and filed.

INDUCEMENT RESOLUTION

Niagara Wind Power, LLC (Steel Winds I Replacement Project) and Erie Wind, LLC (Steel Winds II Replacement Project), 2303 Hamburg Turnpike, Lackawanna, New York. Mr. Murray reviewed the Lead Agency SEQRA Negative Declaration with regard to both projects. Mr. Poloncarz moved to approve the negative declaration for both projects and spoke in favor of the Projects and in favor of renewable energy to help New York State meet 2030 and 2050 renewable energy goals. Mr. Lipsitz seconded the motion and spoke in favor of the Projects

which encourages the Agency to promote renewable energy projects. Ms. McDuffie then called for the vote and the Lead Agency SEQRA Negative Declaration was unanimously approved.

Niagara Wind Power, LLC (Steel Winds I Replacement Project)

Mr. Cappellino then reviewed the proposed project known as Niagara Wind Power LLC which proposes to extend the useful life of the wind turbines located in the City of Lackawanna by engaging in a replacement project that would update the equipment and continue to generate real property taxes under a custom payment-in-lieu of tax (“PILOT”) arrangement. The project consists of replacing the existing nacelle (enclosed engine housing), rotor, hub and blades for each turbine with new equipment from a different manufacturer without disrupting the existing tower, foundation and electrical equipment.

As a condition precedent of receiving Financial Assistance, and as a material term and condition established by the Agency in connection with its approval of the Project, Mr. Cappellino noted that the Company must, subject to potential modification, termination, and/or recapture of Financial Assistance for failure to meet and maintain the commitments and thresholds as described below, submit, on an annual basis or as otherwise indicated below through the termination of the PILOT Agreement, a certification, as so required by the Agency, confirming:

- (i) Investment Commitment – the total investment actually made with respect to the Project at the time of Project completion equals or exceeds \$14,595,715 (which represents the product of 85% multiplied by \$17,171,429, being the total project cost as stated in the Company’s application for Financial Assistance).
- (ii) Employment Commitment – that there are at least three (3) existing full time equivalent (“FTE”) employees located at, or to be located at, the Facility as stated in the Company’s application for Financial Assistance (the “Baseline FTE”); and that the Company has maintained the Baseline FTE as stated in the Company’s application for Financial Assistance. In an effort to confirm and verify the Company’s employment numbers, the Agency requires that, at a minimum, the Company provide employment data to the Agency on a quarterly basis, said information to be provided on the Agency’s “Quarterly Employment Survey” form to be made available to the Company by the Agency.
- (iii) Local Labor Commitment – that the Company adheres to and complies with the Agency’s Local Labor Workforce Certification Policy on a quarterly basis during the construction period.
- (iv) Equal Pay Commitment – that the Company adheres to and complies with the Agency’s Pay Equity Policy.
- (v) Unpaid Real Property Tax Policy Commitment – that the Company is compliant with the Agency’s Unpaid Real Property Tax Policy.

Mr. Johnson moved and Mr. Poloncarz seconded to approve the Project as proposed. Ms. McDuffie then called for the vote and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF NIAGARA WIND POWER, LLC AND/OR INDIVIDUAL(S) OR AFFILIATE(S), SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS BEHALF (INDIVIDUALLY, AND/OR COLLECTIVELY, THE “COMPANY”) IN CONNECTION WITH A CERTAIN PROJECT DESCRIBED BELOW; (ii) RATIFYING THE SCHEDULING, NOTICING, AND CONDUCTING OF A PUBLIC HEARING IN CONNECTION WITH THE PROJECT; (iii) AUTHORIZING THE UNDERTAKING OF THE PROJECT TO PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF A PARTIAL ABATEMENT FROM REAL PROPERTY TAXES BENEFIT THROUGH THE PILOT AGREEMENT; AND (iv) AUTHORIZING THE NEGOTIATION AND EXECUTION OF A LEASE AGREEMENT, LEASEBACK AGREEMENT, A PAYMENT-IN-LIEU-OF-TAX AGREEMENT, A FINANCIAL ASSISTANCE PROJECT AGREEMENT, AND RELATED DOCUMENTS

Erie Wind, LLC (Steel Winds II Replacement Project)

Mr. Cappellino then reviewed the proposed project known as Erie Wind LLC which proposes to extend the useful life of the wind turbines located in the City of Lackawanna by engaging in a replacement project that would update the equipment and continue to generate real property taxes under a custom payment-in-lieu of tax (“PILOT”) arrangement. The project consists of replacing the existing nacelle (enclosed engine housing), rotor, hub and blades for each turbine with new equipment from a different manufacturer without disrupting the existing tower, foundation and electrical equipment.

As a condition precedent of receiving Financial Assistance, and as a material term and condition established by the Agency in connection with its approval of the Project, Mr. Cappellino noted that the Company must, subject to potential modification, termination, and/or recapture of Financial Assistance for failure to meet and maintain the commitments and thresholds as described below, submit, on an annual basis or as otherwise indicated below through the termination of the PILOT Agreement, a certification, as so required by the Agency, confirming:

- (i) Investment Commitment – the total investment actually made with respect to the Project at the time of Project completion equals or exceeds \$3,648,929 (which represents the product of 85% multiplied by \$4,292,858, being the total project cost as stated in the Company’s application for Financial Assistance).
- (ii) Employment Commitment – that there are at least three (3) existing full time equivalent (“FTE”) employees located at, or to be located at, the Facility as stated in the Company’s application for Financial Assistance (the “Baseline FTE”) and that the Company has maintained the Baseline FTE as stated in the Company’s application for Financial Assistance. In an effort to confirm and verify the Company’s employment numbers, the Agency requires that, at a minimum, the

Company provide employment data to the Agency on a quarterly basis, said information to be provided on the Agency's "Quarterly Employment Survey" form to be made available to the Company by the Agency.

- (iii) Local Labor Commitment – that the Company adheres to and complies with the Agency's Local Labor Workforce Certification Policy on a quarterly basis during the construction period.
- (iv) Equal Pay Commitment – that the Company adheres to and complies with the Agency's Pay Equity Policy.
- (v) Unpaid Real Property Tax Policy Commitment – that the Company is compliant with the Agency's Unpaid Real Property Tax Policy.

Ms. Johnson moved and Mr. Johnson seconded to approve the Project as proposed. Mr. Lipsitz noted that public hearing comments were received relating to the use of local labor for construction.

Ms. McDuffie then called for the vote and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF ERIE WIND, LLC AND/OR INDIVIDUAL(S) OR AFFILIATE(S), SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS BEHALF (INDIVIDUALLY, AND/OR COLLECTIVELY, THE "COMPANY") IN CONNECTION WITH A CERTAIN PROJECT DESCRIBED BELOW; (ii) RATIFYING THE SCHEDULING, NOTICING, AND CONDUCTING OF A PUBLIC HEARING IN CONNECTION WITH THE PROJECT; (iii) AUTHORIZING THE UNDERTAKING OF THE PROJECT TO PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF A PARTIAL ABATEMENT FROM REAL PROPERTY TAXES BENEFIT THROUGH THE PILOT AGREEMENT; AND (iv) AUTHORIZING THE NEGOTIATION AND EXECUTION OF A LEASE AGREEMENT, LEASEBACK AGREEMENT, A PAYMENT-IN-LIEU-OF-TAX AGREEMENT, A FINANCIAL ASSISTANCE PROJECT AGREEMENT, AND RELATED DOCUMENTS

MANAGEMENT TEAM REPORTS

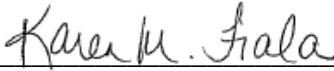
Mr. Emminger moved and Mr. Wingerter seconded to enter into Executive Session for the purpose of discussing current litigation. The motion was then unanimously approved.

At 12:54 p.m., the Agency entered into Executive Session.

Upon motion made by Mr. Emminger and seconded by Mr. Schoetz, and unanimously approved, the Agency terminated Executive Session at 1:12 p.m.

There being no further business to discuss, Ms. McDuffie adjourned the meeting of the Agency at 1:12 p.m.

Dated: November 20, 2019



Karen M. Fiala, Secretary