

**AUTHORIZING RESOLUTION**  
*(Yellowtail Energy, LLC - Substation Project)*

A regular meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center was convened on Thursday, October 6, 2022.

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

Resolution No. 10/2022 - 02

RESOLUTION OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER (THE "AGENCY") (i) APPOINTING THE COMPANY (AS DEFINED HEREIN) AS AGENT OF THE AGENCY, (ii) MAKING A DETERMINATION WITH RESPECT TO THE SUBSTATION PROJECT (DEFINED HEREIN) PURSUANT TO SEQRA (AS DEFINED BELOW), (iii) AUTHORIZING FINANCIAL ASSISTANCE TO THE COMPANY (AS DEFINED HEREIN) IN THE FORM OF A SALES AND USE TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION, RECONSTRUCTION, RENOVATION AND EQUIPPING OF THE PROJECT (AS DEFINED HEREIN), (iv) AUTHORIZING THE NEGOTIATION, EXECUTION AND DELIVERY OF A PROJECT AGREEMENT AND RELATED DOCUMENTS, AND (v) RATIFYING AND CONFIRMING THE FINDINGS OF THE AGENCY MADE IN THE RESOLUTIONS PREVIOUSLY ADOPTED BY THE AGENCY ON MARCH 4, 2021, MARCH 25, 2021, AND JUNE 3, 2021

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 565 of the Laws of 1970 of the State of New York, as amended (hereinafter collectively called the "Act"), the **GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY d/b/a GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER** (the "Agency") was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, pursuant to resolutions adopted on March 4, 2021 (the "Initial Resolution") and March 25, 2021 (the "Final Resolution"), the Agency authorized certain Financial Assistance (as defined in the Final Resolution) with respect to a certain project (the "Hydrogen Project") to be undertaken by **PLUG POWER INC.** (the "PPI"), as agent of the Agency, consisting of: (i) the acquisition by the Agency of a leasehold or other interest in certain real property located at 6840 Crosby Road in the Town of Alabama, New York (the "Hydrogen Land", being more particularly described as all or a portion of tax parcel Nos. 10.-1-41 and 10.-1-42); (ii) the planning, design, construction and operation of a green hydrogen production and distribution facility (collectively, the "Hydrogen Improvements"); (iii) the acquisition of and installation in and around the Land and Improvements by the Company of machinery, equipment, fixtures and

other items of tangible personal property (the "Hydrogen Equipment" and, collectively with, the Hydrogen Land and the Hydrogen Improvements, the "Hydrogen Facility"); and

WHEREAS, pursuant to Section 859-a of the Act, on Monday, March 22, 2021, at 6:30 p.m., local time, at the Town of Alabama Fire Department (Fire Hall) at 2230 Judge Road, Basom, New York 14125, the Agency held a public hearing with respect to the Project and the proposed Financial Assistance being contemplated by the Agency (the "Initial Public Hearing") whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views; and

WHEREAS, following the Initial Public Hearing and the adoption by the Agency of the Final Resolution, PPI informed the Agency that the scope of the Hydrogen Project had changed by the addition of the Substation Project (defined herein); and

WHEREAS, in addition to the change in scope, the Agency was informed that the value of goods and services relating to the Substation Project (defined herein) that will be subject to New York State and local sales and use tax will be in an amount of up to \$35,000,000.00, which will result in New York State and local sales and use tax exemption benefits not to exceed \$2,800,000.00 (the "Substation Financial Assistance"); and

WHEREAS, pursuant to Section 859-a of the Act, on Thursday, June 3, 2021, at 10:00 a.m., local time, at the Alabama Town Hall, 2218 Judge Road, Oakfield, New York 14125, the Agency held a supplemental public hearing with respect to the Substation Project and the proposed financial assistance being contemplated by the Agency (the "Supplemental Public Hearing") whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views. A copy of the Minutes of said Supplemental Public Hearing along with the Notice of Supplemental Public Hearing published and forwarded to the affected taxing jurisdictions ten (10) days prior to said Supplemental Public Hearing are attached hereto as Exhibit A; and

WHEREAS, pursuant to correspondence from counsel to PPI and related affiliates, PPI and affiliates requested the Hydrogen Project and Substation Project be separated into separate projects; and

WHEREAS, as such, **YELLOWTAIL ENERGY, LLC**, an affiliate of PPI, for itself or on behalf of an entity formed or to be formed by it or on its behalf (the "Company") has requested the Agency's assistance with respect to a certain project (the "Substation Project") consisting of: (i) the planning, design, construction and operation on certain real property located on Lewiston Road in the Town of Alabama, New York (being more particularly described as all or a portion of tax parcel Nos. 6-1-84 and 10-1-4.112) of an approximately 345kV to 115kV main substation (the "Substation Improvements"); and (ii) the acquisition of and installation in and around the Substation Improvements by the Company of machinery, equipment, fixtures and other items of tangible personal property (the "Substation Equipment" and, collectively with Substation Improvements, the "Substation Facility"); and

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

WHEREAS, the Agency desires to adopt a resolution (i) approving the Substation Project and the Substation Financial Assistance, (ii) appointing the Company as agent of the Agency, and (iii) ratifying and confirming the findings made by the Agency in the Initial Resolution and Final Resolution adopted; and

WHEREAS, in connection with the Substation Project, the Project Agreement and related documents will be negotiated and presented to the President/CEO, Chair, Vice Chair and/or Senior Vice President of Operations of the Agency for approval and execution subject to adoption of the resolutions contained herein; and

WHEREAS, pursuant to a certain internal memo of the Agency, dated June 23, 2021, the Agency origination fee of 1.25% will not be charged in connection with the undertaking of the Substation Project.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER AS FOLLOWS:

Section 1. Based upon the representations made by the Company to the Agency, the Agency hereby finds and determines that:

(A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(B) It is desirable and in the public interest for the Agency to appoint the Company as its agent for purposes of acquiring, constructing and equipping the Substation Project; and

(C) The Agency has the authority to take the actions contemplated herein under the Act; and

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

(E) The Substation Project will not result in the removal of a facility or commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Substation Project from one area of the State to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project located within the State; and the Agency hereby finds that, to the extent occupants

are relocated from one plant or facility to another, the Substation Project is reasonably necessary to discourage the Substation Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Substation Project occupants in their respective industries; and

(F) The Agency has conducted a coordinated review of the Substation Project pursuant to Article 8 of the Environmental Conservation Law and 6 N.Y.C.R.R. Part 617 (collectively referred to as "SEQRA"). In addition to classifying the Substation Project as a "Type I" action pursuant to SEQRA, the Agency issued a Negative Declaration on August 4, 2022 (the "Negative Declaration"), determining that the Substation Project does not pose a potential significant adverse environmental impact. A copy of the Negative Declaration issued by the Agency is attached hereto as **Exhibit A**.

Section 2. The Agency is hereby authorized to provide to the Company the Substation Financial Assistance in the form of a sales and use tax exemption for purchases and rentals related to the acquisition, construction, reconstruction, renovation and equipping of the Substation Project.

Section 3. Based upon representations and warranties made by the Company, the Agency hereby authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Substation Project, that would otherwise be subject to New York State and local sales and use tax in an amount up to **\$35,000,000.00**, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$2,800,000.00**. The Agency agrees to consider any requests by the Company for increases to the amount of sales and use tax exemption benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services. Pursuant to Section 875(3) of the New York General Municipal Law, the Agency may recover or recapture from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Substation Project, any sales and use tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Substation Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Substation Project, is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Substation Project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Substation Project; or (iv) the sales and use tax exemption benefits are taken in cases where the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Substation Project, fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Substation Project. As a condition precedent of receiving sales and use tax exemption benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, shall (i) cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands.

Section 4. Pursuant to Section 875(3) of the Act, the Agency may recover or recapture from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Substation Project, any Sales and Use Tax Exemption Benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the Sales and Use Tax Exemption Benefits; (ii) the Sales and Use Tax Exemption Benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Substation Project; (iii) the Sales and Use Tax Exemption Benefits are for property or services not authorized by the Agency as part of the Project; or (iv) the Sales and Use Tax Exemption Benefits are taken in cases where the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Substation Project. As a condition precedent of receiving Sales and Use Tax Exemption Benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, shall (i) cooperate with the Agency in its efforts to recover or recapture any Sales and Use Tax Exemption Benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands.

Section 5. Subject to the Company executing the Project Agreement and the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Substation Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, construction and equipping of the Substation Project and hereby appoints the Company as the true and lawful agent of the Agency: (i) to acquire, reconstruct, renovate and equip the Substation Project; (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency with the authority to delegate such agency, in whole or in part, to agents, subagents, contractors, and subcontractors of such agents and subagents and to such other parties as the Company chooses; and (iii) in general, to do all things which may be requisite or proper for completing the Substation Project, all with the same powers and the same validity that the Agency could do if acting in its own behalf; *provided, however*, the Project Agreement shall expire on **March 31, 2023** (unless extended for good cause by the President/CEO of the Agency).

Section 6. The President/CEO, Chair, Vice Chair and/or Senior Vice President of Operations of the Agency are hereby authorized, on behalf of the Agency, to negotiate and enter into the Project Agreement.

Section 7. Unless amended by the terms hereof, Agency hereby ratifies, confirms and reaffirms the findings made in the Initial Resolution, Final Resolution, and Supplemental Resolution, adopted on June 3, 2021.

Section 8. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required

and to execute and deliver all such certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 9. These Resolutions shall take effect immediately upon adoption.

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

	<i>Yea</i>	<i>Nay</i>	<i>Absent</i>	<i>Abstain</i>
Peter Zeliff	[ X ]	[ ]	[ ]	[ ]
Matthew Gray	[ X ]	[ ]	[ ]	[ ]
Paul Battaglia	[ X ]	[ ]	[ ]	[ ]
Craig Yunker	[ X ]	[ ]	[ ]	[ ]
Todd Bender	[ ]	[ ]	[ X ]	[ ]
Chandy Kemp	[ X ]	[ ]	[ ]	[ ]
Marianne Clattenburg	[ X ]	[ ]	[ ]	[ ]

The resolutions were thereupon duly adopted.

**SECRETARY'S CERTIFICATION**  
*(Yellowtail Energy, LLC – Substation Project)*

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

I, the undersigned Secretary of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center, DO HEREBY CERTIFY:

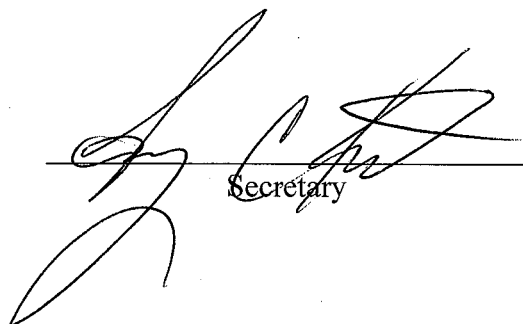
That I have compared the annexed extract of minutes of the meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (the "Agency"), including the resolution contained therein, held on October 6, 2022, with the original thereof on file in the offices of the Agency, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

I FURTHER CERTIFY, that all members of said Agency had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with such Article 7.

I FURTHER CERTIFY, that there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY, that as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or modified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency this 17<sup>th</sup> day of October, 2022.

  
Secretary

**EXHIBIT A**

**NEGATIVE DECLARATION**