



**MEMORANDUM**

TO: HON. GILBERT J. PIAQUADIO, SUPERVISOR  
TOWN BOARD MEMBERS

FROM: MARK C. TAYLOR, ATTORNEY FOR THE TOWN

RE: ROSETON GENERATING LLC 2024 FRANCHISE  
AGREEMENT  
OUR FILE NO. 800.1(B)( ) (2024)

DATE: JULY 19, 2024

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New Windsor, NY 12553

P.O. Box 2280  
Newburgh, NY 12550

**ATTORNEYS**  
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Mark C. Taylor  
Deborah Weisman-Estis  
M. Justin Rider

*M. J. Rider*  
(1906-1968)  
*Elliott M. Weiner*  
(1915-1990)

**COUNSEL**  
Stewart P. Glenn  
Mary Fern Breheney  
Stephen P. Duggan, III  
John K. McGuirk  
(1942-2018)

**OF COUNSEL**  
Craig F. Simon

Enclosed please find the proposed Franchise Agreement between the Town and Roseton Generating LLC for existing duct banks and an overhead cable tray bridge for control signals and power service cables and related equipment passing under and over River Road and existing overhead powerlines passing over Danskammer Road. The agreement will replace an agreement dated April 6, 2001 between the Town and Dynege Roseton, LLC, a copy of which is also enclosed.

Additionally enclosed are the following draft resolutions for the Town Board's consideration:

1. A RESOLUTION OF UNCOORDINATED SEQR DETERMINATION FOR THE TOWN BOARD TO APPROVE A FRANCHISE AGREEMENT FOR ROAD UTILITY CROSSINGS WITH ROSETON GENERATING LLC; and
2. RESOLUTION OF TOWN BOARD PROVIDING FOR PUBLIC NOTICE AND PUBLIC HEARING REGARDING FRANCHISE AGREEMENT FOR ROAD UTILITY CROSSINGS: ROSETON GENERATING, LLC

MCT:sel  
Enc.

cc: Lisa M. Vance Ayers, Town Clerk  
James Osborne, Town Engineer  
Pat Hines, Engineers Representative  
Gerald Canfield, Code Compliance Supervisor  
Ronald Clum, Town Accountant

At a meeting of the Town Board of the Town of Newburgh held at the Town Hall, 1496 Route 300, in the Town of Newburgh, Orange County, New York, on the \_\_th day of July, 2024 at 7:00 o'clock p.m.

PRESENT:

Gilbert J. Piaquadio, Supervisor  
Paul I. Ruggiero, Councilman  
Scott M. Manley, Councilman  
Anthony R LoBiondo, Councilman

A RESOLUTION OF UNCOORDINATED  
SEQR DETERMINATION  
FOR THE TOWN BOARD TO APPROVE  
A FRANCHISE AGREEMENT FOR  
ROAD UTILITY CROSSINGS WITH  
ROSETON GENERATING LLC

Councilman/woman \_\_\_\_\_ presented the following resolution which was seconded by Councilman/woman \_\_\_\_\_.

**WHEREAS**, the Town Board of the Town of Newburgh proposes to undertake, and approve a new franchise agreement for existing duct banks and an overhead cable tray bridge for control signals and power service cables and related equipment passing under and over River Road (also known as Soap Hill Road) and existing overhead powerlines passing over Danskammer Road with Roseton Generating, LLC, said agreement to replace an agreement dated April 6, 2001 between the Town and Dynegy Roseton, LLC in the Town of Newburgh, New York (herein called the "Action"); and

**WHEREAS**, the Town Board of the Town of Newburgh has caused an Environmental Assessment Form (the "EAF") to be prepared for the proposed Action; and

**WHEREAS**, the Town Board proposes to and has authority to undertake and approve the Action; and

**WHEREAS**, the Town Board pursuant to Article 8 of the Environmental Conservation Law ("SEQRA"), Part 617 of the General Regulations adopted pursuant thereto ("Part 617") and Chapter 100 entitled "Environmental Quality Review" of the Town of Newburgh Municipal Code, has heretofore determined that the Action is subject to SEQRA; and

**WHEREAS**, the Town Board has determined that the approval of said Sale is an unlisted action under Part 617 of Article 8 of the Environmental Quality Review Act, and does not require a coordinated review; and

WHEREAS, the Town Board has determined that the Action is not located in an agricultural district; and

WHEREAS, the Town Board has determined to conduct an uncoordinated review of the Action; and

WHEREAS, in performing its review of the Action, the Town Board has (i) considered the Action as an action as defined in subdivisions 617.2(b) and 617.3(g) of Part 617, (ii) thoroughly reviewed the EAF, and any and all other documents prepared and submitted with respect to this proposed action and its environmental review, and (iii) thoroughly analyzed the potential relevant areas of environmental concern to determine if the proposed action may have a significant adverse impact on the environment, including the criteria identified in 6 NYCRR Section 617.7(c); and

WHEREAS, the Town Board has not identified relevant areas of environmental concern which would lead to a determination that the Action may have a significant adverse effect on the environment either in the short term, long term or cumulatively given the likely consequences, setting, probability of occurrence, duration, irreversibility, geographic scope, magnitude and the number of people affected.

NOW THEREFORE, BE IT RESOLVED:

1. The Town Board pursuant to Article 8 of the Environmental Conservation Law ("SEQR"), Part 617 of the General Regulations adopted pursuant thereto ("Part 617") and Chapter 100 entitled "Environmental Quality Review" of the Town of Newburgh Municipal Code hereby determines that said Action will not have a significant effect on the environment and, accordingly, does issue a Negative Declaration; and
2. The Town Board accordingly determines that an Environmental Impact Statement will not be prepared.
3. The Town Board authorizes the Supervisor to execute and file the Negative Declaration annexed hereto and all other appropriate notices and documents to effectuate these resolutions in accordance with the applicable provisions of law.

The foregoing resolution was duly put to a vote on roll call which resulted as follows:

Paul I. Ruggiero, Councilman voting \_\_\_\_\_

Scott M. Manley, Councilman voting \_\_\_\_\_

Anthony R. LoBiondo Councilman voting \_\_\_\_\_

Gilbert J. Piaquadio, Supervisor voting \_\_\_\_\_

The resolution was thereupon declared duly adopted .

At a meeting of the Town Board of the Town of Newburgh, held at the Town Hall, 1496 Route 300 in the Town of Newburgh, Orange County, New York on the \_\_\_th day of July, 2024 at 7:00 P.M., Prevailing Time

PRESENT:

- Gilbert J. Piaquadio, Supervisor
- Paul I. Ruggiero, Councilman
- Scott M. Manley, Councilman
- Anthony R. LoBiondo, Councilman

RESOLUTION OF TOWN BOARD PROVIDING FOR PUBLIC NOTICE AND PUBLIC HEARING REGARDING FRANCHISE AGREEMENT FOR ROAD UTILITY CROSSINGS: ROSETON GENERATING, LLC

Councilman \_\_\_\_\_ presented the following resolution which was seconded by Councilman \_\_\_\_\_.

BE IT RESOLVED that the Town Board shall hold a public hearing at the Town Hall, 1496 Route 300 in the Town of Newburgh, New York on the \_\_\_th day of August, 2024 at 7:00 o'clock, p.m. for the purpose of hearing public comment on a proposed franchise agreement for existing duct banks and an overhead cable tray bridge for control signals and power service cables and related equipment passing under and over River Road (also known as Soap Hill Road) and existing overhead powerlines passing over Danskammer Road with Roseton Generating, LLC, said agreement to replace an agreement dated April 6, 2001 between the Town and Dynege Roseton, LLC; and

BE IT FURTHER RESOLVED that the Town Clerk give notice of such public hearing by the publication of a notice in the official newspaper(s) of the Town, specifying the time when and the place where such public hearing will be held at least ten (10) days prior to the public hearing.

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

- Paul I. Ruggiero, Councilman voting \_\_\_\_\_
- Scott M. Manley, Councilman voting \_\_\_\_\_
- Anthony R. LoBiondo, Councilman voting \_\_\_\_\_
- Gilbert J. Piaquadio, Supervisor voting \_\_\_\_\_

The resolution was thereupon declared duly adopted.

## AGREEMENT

THIS AGREEMENT. made the \_\_\_\_\_ day of \_\_\_\_\_, 2024 by and between the TOWN OF NEWBURGH, a municipal corporation of the State of New York, with its principal offices at Town Hall, 1496 Route 300, Town of Newburgh, County of Orange, State of New York (the "Town"), and ROSETON GENERATING LLC, (the "Company"), and having its address at 992 River Road, Town of Newburgh, State of New York, 12550

### WITNESSETH:

WHEREAS, the Company owns and maintains (i) the underground duct banks that pass under River Road (also known as Soap Hill Road) in one location and a proposed overhead cable tray bridge that will pass over River Road depicted and located as shown on the drawings annexed as Exhibit "A" hereto that contain and will contain control signals and power service cables and related equipment that run from the power generating facilities located near said River Road known as the Roseton Power Plant also owned by the Company (the "Roseton Power Plant") to Central Hudson's switchyard (the "Switchyard"), and (ii) the two overhead 345 KV power lines extending from the Roseton Power Plant to the Switchyard; one of which overhead power lines crosses above River Road in two locations and the other of which crosses above Danskammer Road (the portion of the underground duct bank which run under and the overhead cable tray which will run over, together with the control signals and power service cables and related equipment contained therein ( and the portion of the two 345 KV power lines which run over, River Road and Danskammer Road are referred to herein as the "Equipment", and the portion of River Road and Danskammer Road where such Equipment is currently located is referred to herein as the "Equipment Sites"); and

WHEREAS, the Company is a limited liability company authorized to do business in the State of New York and owns the entire right, title and interest in and to the Equipment and

WHEREAS, the Company seeks expressed and independent authority from the Town to operate, repair, replace and maintain the Equipment in its present and existing locations and the proposed location shown on Exhibit "A"; and

WHEREAS, it is in the public interest to enter into this Agreement and provide to the Company the Rights granted hereunder,

NOW THEREFORE, in consideration of mutual covenants hereinafter set forth, the parties agree as follows:

1. Pursuant to, and in accordance with, the provisions of Section 64(7) of the Town Law and other applicable provisions of law, the Town grants to the Company the right, permission, franchise and consent (collectively the "Rights") to allow the Company to operate, repair, replace and maintain the Equipment in its present and existing and proposed locations on, under and over the Equipment Sites for the purpose of the continued transmitting and/or distributing electrical and related service to and from the Roseton Power Plant and any generating facilities located adjacent thereto. Said Rights are hereby granted by the Town Board of the Town of Newburgh, and are hereby accepted by the Company, subject to the terms and conditions set forth hereinafter. The Company agrees that the Rights granted hereunder are limited to the Equipment Sites.
2. Any construction or maintenance and/or removal of the Equipment that affects River Road, Soap Hill Road and/or Danskammer Road (collectively the "Roads") or which would, or could obstruct traffic on any of said Roads shall be repaired and/or removed in accordance with the applicable rules and regulations of the

Town of Newburgh as in effect at the time of such construction, maintenance or removal (the "Town Code"). Such construction and/or maintenance shall not unreasonably interfere with traffic over, or public use of, any of said Roads and the Company shall comply with reasonable requirements as may be prescribed by the Town Highway Superintendent; the expense of repairing River Road, Soap Hill Road and/or Danskammer Road as a result of any damage caused by the Company in the exercise of its Rights shall be borne by the Company; and the location of any equipment used by the Company in such construction, maintenance or removal which restricts or obstructs the use or operation of the Roads shall not be or become a vested interest but shall be removed by the Company upon completion of such construction, maintenance or removal in accordance with this Agreement.

3. The Company shall pay to the Town an annual fee of Seventy Five Thousand Dollars (\$75,000.00) (the "Annual Fee"). The first Annual Fee shall be paid on the execution of this Agreement and a like sum annually thereafter on each anniversary date of this Agreement. Commencing on the first anniversary date of the Agreement and in each year thereafter (the "Anniversary Date") in which the National Consumer Price Index as published for the United States Bureau of Labor Statistics in March 2024 (the "Base Year") increases, the Annual Fee shall be increased in proportion to the rise in such Index from its level for the Base Year to its level for each succeeding year thereafter. The Consumer Price Index ("the CPI) shall mean the CPI for all urban consumers as maintained by the Bureau of Labor Statistics of the United States Department of Labor for New York and Northern New Jersey. If at any time during the period of this



Agreement the CPI is no longer published or issued, the Parties shall use any other Index that is then generally recognized and accepted for similar determinations of purchasing power that can be mutually agreed upon by the Parties.

4. Nothing contained herein shall be construed to exempt the Company from compliance with the local laws, ordinances or resolutions of the Town, including but not limited to those relating to the construction or location of any equipment or facilities or the maintenance thereof.
5. The Company agrees that it will not convey or dispose of said Rights by lease, assignment or otherwise, without the prior written consent of the Town Board of the Town, except that the Company may transfer said Rights or an interest therein or portion thereof to any entity owned or controlled by or under common control with the Company. No consent shall be required for any assignment for collateral, pledge, transfer in trust, mortgage or hypothecation as a whole or in part for the purpose of securing any indebtedness or the exercise of any remedies thereunder. The Town agrees that it will not withhold or delay any consent unreasonably or arbitrarily.
6. The Company shall have no recourse against the Town for any loss, cost expense or damage arising out of any provision or requirement of this Agreement, or its lawful application and enforcement.
7. The Rights granted to the Company hereunder, including the right to keep and operate the Equipment in its present location, shall be perpetual. However, if the Company shall fail to pay the fee required by Section 3 above or otherwise fails to comply in any material respects with the requirements of this Agreement, the Town may upon notice to the Company declare a default hereunder, said notice

to be served by certified mail, return receipt requested, addressed to the Company at its address set forth on page I of this Agreement or such other address (of the Company or its lenders) as the Company shall specify in writing in accordance with Section 23. If the Company (or such lenders) shall fail to cure such default within 60 days after receipt of such notice, the Company shall, upon the Town's demand, promptly remove any of its equipment, materials or other items on the Equipment Sites which restrict or obstruct the use or operation of the Roads and restore any portion of the Equipment Sites excavated or otherwise damaged by the Company to the same condition in which such areas existed prior to such excavation, damage or removal. Such removal and restoration shall not relieve the Company of its obligation to cure such default or to comply with any other obligation hereunder. In addition, the Town may suspend any rights the Company may have hereunder to excavate or otherwise restrict the use of the Roads for repeated material violations of this Agreement until such time as the Company shall provide the Town reasonable assurance that the Company will comply with its obligations under this Agreement.

8. The Company agrees that it will file in accordance with the Town Code, its bond, in form and amount in accordance with the Town Code whenever the Company opens any of the Roads to install, repair or service any of the Equipment.
9. So long as the Equipment is on the Equipment Site, the Equipment shall be placed, erected, installed, repaired and maintained by the Company at its expense hereunder in a proper workmanlike manner so that the same shall in no way endanger the public, and shall be maintained in a safe, neat, clean and orderly condition at all times. The Company shall, at the Company's own cost and expense, take good care

of the Equipment and shall make any and all ordinary and necessary repairs thereto as may be required. All construction and maintenance of the Equipment hereunder shall be carried out by the Company at its expense in accordance with the requirements of all applicable Federal, State and/or Town (and their agencies and/or subdivisions) statutes, local laws, ordinances, codes, rules or regulations.

10. Any privilege claimed under this Agreement by the Company in any portion of the Roads shall be subordinate to any existing legal rights of record thereof.
11. The Company will furnish the Town Board of the Town information and sketches which accurately define the location of its installations in, over and under River Road, Soap Hill Road and Danskammer Road.
12. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to have been inserted herein, and if through mistake or otherwise, such provision is not inserted, then upon the application of either party, this Agreement shall be physically amended forthwith to make such insertion.
13. The Company acknowledges that it is fully familiar with the physical condition of the Equipment Sites. The Company acknowledges and agrees that neither the Town nor the Town Highway Superintendent has made any representations or promises as to the condition of said Equipment Sites.
14. The Company agrees that the Town Highway Superintendent and/or Town Engineer shall have the right to enter into and upon the Equipment Sites, or any part thereof, at all reasonable hours for the purpose of examining the same, so far as the Town Highway Superintendent and/or Town Engineer may deem desirable or necessary for the safety and protection of said area or for the

purpose of seeing that the provisions of this Agreement are fully carried out and complied with by the Company.

15. In the event that it is necessary for the Company to excavate in order to obtain access to any Equipment, the Company shall be fully responsible for any expenses incurred in replacing any blacktop or other road surface materials which are damaged or distributed as a result of such excavation.
16. If any lien is filed against the Equipment Sites as a result of any installation, repairs, maintenance or work performed by the Company on, over or under the Equipment Sites, the Company shall cause said lien to be removed or bonded within ten (10) days after it has been filed, and the failure of the Company to remove said lien shall obligate the Company to the Town for any damages resulting therefrom.
17. The Company agrees to reimburse the Town for any and all damages or injury to any real property or personal property of the Town that may arise, directly or indirectly, from the negligence, acts or omissions of the Company, its officers, agents, employees, customers, suppliers, guests or invitees in the exercise of the Rights granted to the Company hereunder.
18. The Company agrees that the Company shall defend, indemnify and save harmless the Town Highway Superintendent, the Town's officers, agents and employees from any and all suits, actions, claims, causes of action of every name and description brought against the Town Highway Superintendent and/or the Town's officers, agents or employees for and on account of any injuries or damages received or sustained by any party or parties by or from the negligence, acts or omissions of the Company, its officers, agents, employees, customers, suppliers, guest or invitees in

the exercise of the Company's rights hereunder. Such indemnity and liability shall not be limited by reason of enumeration of any insurance coverage herein provided. Nothing herein shall create or give to third parties any claim or right of action against the Town Highway Superintendent, and/or the Town's officers, agents, employees beyond such as may legally exist irrespective of the foregoing paragraph.

19. The Company agrees that it will, at its own cost and expense, obtain and keep in effect during the term of this Agreement, a comprehensive general liability policy naming the Town, the Town Highway Superintendent and the Town Engineer as additional insureds, insuring against liability for injury to persons (and death) or property of any person or persons occasioned from or arising out of this Agreement. Said policy shall have single limit coverage in the amount of no less than Three Million Dollars (\$3,000,000.00). A certificate of insurance evidencing the coverage required herein shall be delivered to the Town within thirty (30) days of the execution of this Agreement, and thereafter at least thirty (30) days prior to the expiration of such policy. Each such insurance policy shall state on it that the insuring company shall give the Town thirty (30) days notice, in writing, in advance of any cancellation of any such policy.
20. It is understood and agreed that whether or not it is specifically so provided herein, any provision of this Agreement which, by its nature and effect, is required to be observed, kept or performed after any termination of this Agreement, shall survive such termination and shall not be merged therein, but shall be and remain binding upon and for the benefit of the Town Highway Superintendent and/or Town Engineer and the Town's officers, agents and employees until fully observed, kept or performed by the Company.

21. The Company is an independent contractor and is not an employee, agent or partner of the Town Highway Superintendent and/or Town Engineer, and the Town's officers, agents and employees for any purpose whatsoever.
22. This Agreement shall be construed in accordance with the laws of the State of New York.
23. Any notices and payments required by this Agreement shall be in writing, mailed first class, certified, registered or delivered by hand to the addresses of the parties set forth on page 1 of the Agreement or to such addresses as may be designated from time to time by either party in writing. Such notices shall take effect when mailed or when received if delivered by hand.
24. Any and all prior agreements and/or privileges, rights and/or grants concerning the permitted location of the Equipment at the Equipment Sites by and between the Town and the Company, and any predecessor in interest in the Equipment are hereby terminated and canceled effective immediately.
25. This Agreement contains the entire agreement between the parties hereto and supersedes all prior permits, agreements, understandings, negotiations and arrangements between the parties concerning the permitted location of the Equipment at the Equipment Sites and may not be changed or terminated orally and no amendment, modification, change or waiver of any of the provisions hereof shall be binding unless in writing and signed by the parties hereto. There are no terms or conditions other than those contained herein concerning the permitted location of the Equipment at the Equipment Sites and there are no written or verbal statements or representations, warranties or agreements between the parties hereto with respect to the permitted location of the Equipment at the Equipment Sites which have not

been embodied herein. No privilege or exemption is granted or conferred by this Agreement except those specifically prescribed herein.

26. All Rights, including the benefits and burdens shall be binding upon and inure to the benefit of the parties hereto, their successor and assigns.

IN WITNESS WHEREOF, the Town Board of the Town of Newburgh has caused these presents to be signed by GILBERT J. PIAQUADIO, its Supervisor, duly authorized to do so and to be attested to by LISA M VANCE AYERS Town Clerk, and ROSETON GENERATING LLC has caused these presents to be signed by \_\_\_\_\_ the day and year first above written.

TOWN OF NEWBURGH

By: \_\_\_\_\_  
Name Title

ROSETON GENERATING LLC

By: \_\_\_\_\_  
Name Title

STATE OF NEW YORK;

COUNTY OF ORANGE:

On the \_\_\_ day of \_\_\_\_\_ 2024, before me, the undersigned, a notary public in and for said State, personally appeared \_\_\_\_\_ 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.

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Notary Public

STATE OF NEW YORK:

COUNTY OF ORANGE;

On the \_\_\_ day of \_\_\_\_\_ 2024, before me, the undersigned, a Notary Public in and for said State, personally appeared GILBERT J. PIAQUADIO, 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.

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Notary Public



STATE OF NEW YORK:

COUNTY OF ORANGE:

I, Lisa M. Vance Ayers, certify that I am the Town Clerk of the Town of Newburgh, a municipal corporation, organized and existing under the law of the State of New York, and a party to the foregoing instrument; that Gilbert J. Piaquadio, who signed said instrument on behalf of the Town of Newburgh, was at the time of the execution the duly elected and serving Supervisor of the Town of Newburgh, and that said instrument was duly signed for and on behalf of the said TOWN by authority granted to him by the Town Board of the Town of Newburgh.

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Lisa M. Vance Ayers, Town Clerk

# Exhibit "A"

TOWN CLERK  
**received**  
4-6-01

AGREEMENT

THIS AGREEMENT, made the 6<sup>th</sup> day of April 2001, by and between the TOWN OF NEWBURGH, a municipal corporation of the State of New York, with its principal offices at Town Hall, 1496 Route 300, Town of Newburgh, County of Orange, State of New York (the "Town"), and DYNEGY ROSETON, L.L.C., a Delaware limited liability company, 1000 Louisiana Street, Suite 5800, Houston, Texas 77002 (the "Company").

WITNESSETH:

WHEREAS, Central Hudson Gas & Electric Corporation ("Central Hudson") owns an interest in and maintains (i) the underground duct banks that pass under River Road (also known as Soap Hill Road) in two locations that contain control signals and power service cables and related equipment that run from the power generating facilities located near said River Road known as the Roseton Power Plant (the "Roseton Power Plant") to Central Hudson's switchyard (the "Switchyard"), and (ii) the two overhead 345 KV power lines extending from the Roseton Power Plant to the Switchyard; one of which overhead power lines crosses above River Road in two locations and the other of which crosses above Danskammer Road (the portion of the underground duct bank which runs under, together with the control signals and power service cables and related equipment contained therein (other than certain cables owned exclusively by Central Hudson), and the portion of the two 345 KV power lines which run over, River Road and Danskammer Road are referred to herein as the "Equipment", and the portion of River Road and Danskammer Road where such Equipment is currently located is referred to herein as the "Equipment Sites"); and

WHEREAS, Central Hudson has sold and transferred to the Company all of its right, title and interest in and to the Roseton Power Plant; and

WHEREAS, the Company is a limited liability company authorized to do business in the State of New York and desires to acquire the entire right, title and interest of Central Hudson in and to the Equipment; and

WHEREAS, the Company seeks expressed and independent authority from the Town to operate, repair, replace and maintain the Equipment in its present and existing locations; and

WHEREAS, it is in the public interest to enter into this Agreement and provide to the Company the Rights granted hereunder;

NOW THEREFORE, in consideration of mutual covenants hereinafter set forth, and the payment by the Company to the Town of the sum of One Hundred Twenty Five Thousand Dollars (\$125,000.00), the parties agree as follows:

1. Pursuant to, and in accordance with, the provisions of Section 64(7) of the Town Law and other applicable provisions of law, the Town grants to the Company the right, permission, franchise and consent (collectively the "Rights") to allow the Company to operate, repair, replace and maintain the Equipment in its present and existing locations on, under and over the Equipment Sites for the purpose of the continued transmitting and/or distributing electrical and related service to and from the Roseton Power Plant and any generating facilities located adjacent thereto. Said Rights are hereby granted by the Town Board of the Town of Newburgh, and are hereby accepted by the Company, subject to the terms and conditions set forth hereinafter. The Company agrees that the Rights granted hereunder are limited to the Equipment Sites.
2. Any construction or maintenance and/or removal of the Equipment that affects River Road, Soap Hill Road and/or Danskammer Road (collectively the "Roads")

or which would, or could obstruct traffic on any of said Roads shall be repaired and/or removed in accordance with the applicable rules and regulations of the Town of Newburgh as in effect at the time of such construction, maintenance or removal (the "Town Code"). Such construction and/or maintenance shall not unreasonably interfere with traffic over, or public use of, any of said Roads and the Company shall comply with reasonable requirements as may be prescribed by the Town Highway Superintendent; the expense of repairing River Road, Soap Hill Road and/or Danskammer Road as a result of any damage caused by the Company in the exercise of its Rights shall be borne by the Company; and the location of any equipment used by the Company in such construction, maintenance or removal which restricts or obstructs the use or operation of the Roads shall not be or become a vested interest but shall be removed by the Company upon completion of such construction, maintenance or removal in accordance with this Agreement.

- \* 3. The Company shall pay to the Town on the execution of this Agreement the sum of One Hundred Twenty Five Thousand Dollars (\$125,000.00) as a one (1) time fee for the Rights together with an annual fee of Twenty Thousand Dollars (\$20,000.00) (the "Annual Fee"). The first Annual Fee shall be paid on the execution of this Agreement and a like sum annually thereafter on each anniversary date of this Agreement. Commencing on the first anniversary date of this Agreement and in each year thereafter (the "Anniversary Date") in which the National Consumer Price Index as published for the United States Bureau of Labor Statistics in March 2001 (the "Base Year") increases, the Annual Fee shall

be increased in proportion to the rise in such Index from its level for the Base Year to its level for each succeeding year thereafter. The Consumer Price Index ("the CPI") shall mean the CPI for all urban consumers as maintained by the Bureau of Labor Statistics of the United States Department of Labor for New York and Northern New Jersey. If at any time during the period of this Agreement the CPI is no longer published or issued, the Parties shall use any other Index that is then generally recognized and accepted for similar determinations of purchasing power that can be mutually agreed upon by the Parties.

4. Nothing contained herein shall be construed to exempt the Company from compliance with the local laws, ordinances or resolutions of the Town, including but not limited to those relating to the construction or location of any equipment or facilities or the maintenance thereof.
5. The Company agrees that it will not convey or dispose of said Rights by lease, assignment or otherwise, without the prior written consent of the Town Board of the Town, except that the Company may transfer said Rights or an interest therein or portion thereof to any entity owned or controlled by or under common control with the Company. No consent shall be required for any assignment for collateral, pledge, transfer in trust, mortgage or hypothecation as a whole or in part for the purpose of securing any indebtedness or the exercise of any remedies thereunder. The Town agrees that it will not withhold or delay any consent unreasonably or arbitrarily.

6. The Company shall have no recourse against the Town for any loss, cost expense or damage arising out of any provision or requirement of this Agreement, or its lawful application and enforcement.
7. The Rights granted to the Company hereunder, including the right to keep and operate the Equipment in its present location, shall be perpetual. However, if the Company shall fail to pay the fee required by Section 3 above or otherwise fails to comply in any material respects with the requirements of this Agreement, the Town may upon notice to the Company declare a default hereunder, said notice to be served by certified mail, return receipt requested, addressed to the Company at its address set forth on page 1 of this Agreement or such other address (of the Company or its lenders) as the Company shall specify in writing in accordance with Section 23. If the Company (or such lenders) shall fail to cure such default within 60 days after receipt of such notice, the Company shall, upon the Town's demand, promptly remove any of its equipment, materials or other items on the Equipment Sites which restrict or obstruct the use or operation of the Roads and restore any portion of the Equipment Sites excavated or otherwise damaged by the Company to the same condition in which such areas existed prior to such excavation, damage or removal. Such removal and restoration shall not relieve the Company of its obligation to cure such default or to comply with any other obligation hereunder. In addition, the Town may suspend any rights the Company may have hereunder to excavate or otherwise restrict the use of the Roads for repeated material violations of this Agreement until such time as the Company

shall provide the Town reasonable assurance that the Company will comply with its obligations under this Agreement.

8. The Company agrees that it will file in accordance with the Town Code, its bond, in form and amount in accordance with the Town Code whenever the Company opens any of the Roads to install, repair or service any of the Equipment.
9. So long as the Equipment is on the Equipment Site, the Equipment shall be placed, erected, installed, repaired and maintained by the Company at its expense hereunder in a proper workmanlike manner so that the same shall in no way endanger the public, and shall be maintained in a safe, neat, clean and orderly condition at all times. The Company shall, at the Company's own cost and expense, take good care of the Equipment and shall make any and all ordinary and necessary repairs thereto as may be required. All construction and maintenance of the Equipment hereunder shall be carried out by the Company at its expense in accordance with the requirements of all applicable Federal, State and/or Town (and their agencies and/or subdivisions) statutes, local laws, ordinances, codes, rules or regulations.
10. Any privilege claimed under this Agreement by the Company in any portion of the Roads shall be subordinate to any existing legal rights of record thereof.
11. The Company will furnish the Town Board of the Town information and sketches which accurately define the location of its installations in, over and under River Road, Soap Hill Road and Danskammer Road.
12. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to have been inserted herein, and if through mistake



or otherwise, such provision is not inserted, then upon the application of either party, this Agreement shall be physically amended forthwith to make such insertion.

13. The Company acknowledges that it is fully familiar with the physical condition of the Equipment Sites. The Company acknowledges and agrees that neither the Town nor the Town Highway Superintendent has made any representations or promises as to the condition of said Equipment Sites.
14. The Company agrees that the Town Highway Superintendent and/or Town Engineer shall have the right to enter into and upon the Equipment Sites, or any part thereof, at all reasonable hours for the purpose of examining the same, so far as the Town Highway Superintendent and/or Town Engineer may deem desirable or necessary for the safety and protection of said area or for the purpose of seeing that the provisions of this Agreement are fully carried out and complied with by the Company.
15. In the event that it is necessary for the Company to excavate in order to obtain access to any Equipment, the Company shall be fully responsible for any expenses incurred in replacing any blacktop or other road surface materials which are damaged or distributed as a result of such excavation.
16. If any lien is filed against the Equipment Sites as a result of any installation, repairs, maintenance or work performed by the Company on, over or under the Equipment Sites, the Company shall cause said lien to be removed or bonded within ten (10) days after it has been filed, and the failure of the Company to

remove said lien shall obligate the Company to the Town for any damages resulting therefrom.

17. The Company agrees to reimburse the Town for any and all damages or injury to any real property or personal property of the Town that may arise, directly or indirectly, from the negligence, acts or omissions of the Company, its officers, agents, employees, customers, suppliers, guests or invitees in the exercise of the Rights granted to the Company hereunder.
18. The Company agrees that the Company shall defend, indemnify and save harmless the Town Highway Superintendent, the Town's officers, agents and employees from any and all suits, actions, claims, causes of action of every name and description brought against the Town Highway Superintendent and/or the Town's officers, agents or employees for and on account of any injuries or damages received or sustained by any party or parties by or from the negligence, acts or omissions of the Company, its officers, agents, employees, customers, suppliers, guest or invitees in the exercise of the Company's rights hereunder. Such indemnity and liability shall not be limited by reason of enumeration of any insurance coverage herein provided. Nothing herein shall create or give to third parties any claim or right of action against the Town Highway Superintendent, and/or the Town's officers, agents, employees beyond such as may legally exist irrespective of the foregoing paragraph.
19. The Company agrees that it will, at its own cost and expense, obtain and keep in effect during the term of this Agreement, a comprehensive general liability policy naming the Town, the Town Highway Superintendent and the Town Engineer as

additional insureds, insuring against liability for injury to persons (and death) or property of any person or persons occasioned from or arising out of this Agreement. Said policy shall have single limit coverage in the amount of no less than Three Million Dollars (\$3,000,000.00). A certificate of insurance evidencing the coverage required herein shall be delivered to the Town within thirty (30) days of the execution of this Agreement, and thereafter at least thirty (30) days prior to the expiration of such policy. Each such insurance policy shall state on it that the insuring company shall give the Town thirty (30) days notice, in writing, in advance of any cancellation of any such policy.

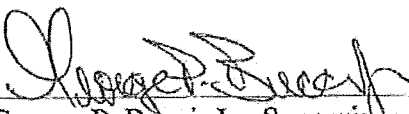
20. It is understood and agreed that whether or not it is specifically so provided herein, any provision of this Agreement which, by its nature and effect, is required to be observed, kept or performed after any termination of this Agreement, shall survive such termination and shall not be merged therein, but shall be and remain binding upon and for the benefit of the Town Highway Superintendent and/or Town Engineer and the Town's officers, agents and employees until fully observed, kept or performed by the Company.
21. The Company is an independent contractor and is not an employee, agent or partner of the Town Highway Superintendent and/or Town Engineer, and the Town's officers, agents and employees for any purpose whatsoever.
22. This Agreement shall be construed in accordance with the laws of the State of New York.
23. Any notices and payments required by this Agreement shall be in writing, mailed first class, certified, registered or delivered by hand to the addresses of the parties

set forth on page 1 of the Agreement or to such addresses as may be designated from time to time by either party in writing. Such notices shall take effect when mailed or when received if delivered by hand.

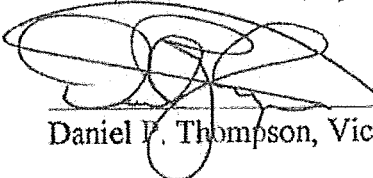

24. Any and all prior agreements and/or privileges, rights and/or grants concerning the permitted location of the Equipment at the Equipment Sites by and between the Town and the Company are hereby terminated and canceled effective immediately.
25. This Agreement contains the entire agreement between the parties hereto and supercedes all prior permits, agreements, understandings, negotiations and arrangements between the parties concerning the permitted location of the Equipment at the Equipment Sites and may not be changed or terminated orally and no amendment, modification, change or waiver of any of the provisions hereof shall be binding unless in writing and signed by the parties hereto. There are no terms or conditions other than those contained herein concerning the permitted location of the Equipment at the Equipment Sites and there are no written or verbal statements or representations, warranties or agreements between the parties hereto with respect to the permitted location of the Equipment at the Equipment Sites which have not been embodied herein. No privilege or exemption is granted or conferred by this Agreement except those specifically prescribed herein.
26. All Rights, including the benefits and burdens shall be binding upon and inure to the benefit of the parties hereto, their successor and assigns.

IN WITNESS WHEREOF, the Town Board of the Town of Newburgh has caused these presents to be signed by GEORGE P. BUCCI, JR., its Supervisor, duly authorized to do so and to be attested to by WAYNE C. BOOTH, Town Clerk, and DYNEGY ROSETON, L.L.C. has caused these presents to be signed by DANIEL P. THOMPSON, Vice President, the day and year first above written.

TOWN OF NEWBURGH

By:   
George P. Buccci, Jr., Supervisor

DYNEGY ROSETON, L.L.C.

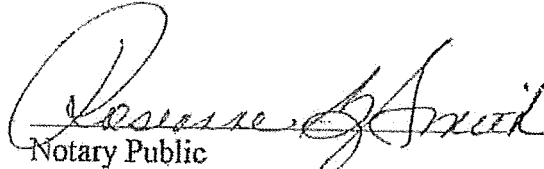
By:    
Daniel P. Thompson, Vice President

STATE OF NEW YORK;

§

COUNTY OF ORANGE;

On the 6 day of April, 2001, before me, the undersigned, a notary public in and for said state, personally appeared DANIEL P. THOMPSON personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is/are 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

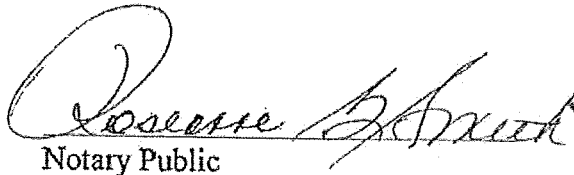
ROSEANNE B. SMITH  
Notary Public, State of New York  
No. 4688698  
Qualified in Orange County  
Commission Expires Sept. 30, 19 2002

STATE OF NEW YORK:

§

COUNTY OF ORANGE;

On the 6 day of April 2001, before me, the undersigned, a Notary Public in and for said State, personally appeared GEORGE P. BUCCI, JR., 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

ROSEANNE B. SMITH  
Notary Public, State of New York  
No. 4688698  
Qualified in Orange County  
Commission Expires Sept. 30, 19 2002

STATE OF NEW YORK:

§

COUNTY OF ORANGE:

I, WAYNE C. BOOTH, certify that I am the Town Clerk of the Town of Newburgh, a municipal corporation, organized and existing under the law of the State of New York, and a party to the foregoing instrument; that GEORGE P. BUCCI, JR., who signed said instrument on behalf of the Town of Newburgh, was at the time of the execution the duly elected and serving Supervisor of the Town of Newburgh, and that said instrument was duly signed for and on behalf of the said TOWN by authority granted to him by the Town Board of the Town of Newburgh.

  
WAYNE C. BOOTH, TOWN CLERK