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NRG ENERGY INC.,

PUBLIC HEARING, DUNKIRK, NEW YORK

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PUBLIC HEARING held before **AMELIA MOLLER**,  
Notary Public, on April 22, 2008 at 7:00 p.m.,  
at Dunkirk High School Auditorium, 75 West  
Sixth Street, Dunkirk, New York, Pursuant to  
Notice.

APPEARANCES:

**GREGORY PETERSON**, COUNSEL FOR COUNTY OF  
CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY,  
PHILLIPS LYTTLE  
**RICHARD DIXON**, CHIEF FINANCIAL OFFICER,  
CHAUTAUQUA COUNTY INDUSTRIAL DEVELOPMENT AGENCY



NRG ENERGY, INC., DUNKIRK HIGH SCHOOL, 4/22/08

|    |                                |            |
|----|--------------------------------|------------|
| 1  | <b>GREG EDWARDS</b> -----      | <b>11</b>  |
| 2  | <b>KEITH AHLSTROM</b> -----    | <b>DNS</b> |
| 3  | <b>EDWARD WISHIEWSKI</b> ----- | <b>DNS</b> |
| 4  | <b>RICHARD FREY</b> -----      | <b>15</b>  |
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1 MR. PETERSON: Good evening my name is Greg  
2 Peterson I am the general counsel for the  
3 County of Chautauqua Industrial Development  
4 Agency from the law firm of Phillips Lytle in  
5 Jamestown, New York. I have been directed by  
6 the members of the Agency to hold a public  
7 hearing. Today is April 22, 2008 and the time  
8 is 7:03 p.m., we are at Dunkirk High School  
9 Auditorium, 75 West Sixth Street, City of  
10 Dunkirk, County of Chautauqua, New York.  
11 This is a public hearing pursuant to Section  
12 859-a of the New York General Municipal Law as  
13 amended. The Agency has received an  
14 application for financial assistance in  
15 connection with the following matter: Dunkirk  
16 Power, LLC, an affiliate of NRG Energy,  
17 submitted an application for financial  
18 assistance pursuant to which application the  
19 applicant, that's Dunkirk Power, I'll refer to  
20 Dunkirk Power as the applicant, requested that  
21 the Agency undertake a project consisting of  
22 One: The acquisition of a lease hold interest  
23 in the improved real property located at 100

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1 Point Drive North, City of Dunkirk, County of  
2 Chautauqua; the renovation of the existing  
3 Dunkirk Steam Station located on the premises  
4 and the construction from time to time of  
5 certain additional improvements on the premises  
6 and the acquisition and installation of certain  
7 equipment, machinery, fixtures and furnishings  
8 therein and thereon, collectively known as the  
9 equipment, which may include, without  
10 limitation, solid waste disposal facility and  
11 pollution control equipment as well as the  
12 equipment and maintenance work necessary to  
13 comply with an environmental consent order  
14 covering the facility. In addition there will  
15 be the granting of certain financial  
16 assistance, within the meaning of Section  
17 854(14) of the Act, with respect to the  
18 foregoing. In addition there will be a  
19 sublease with an obligation to purchase the  
20 Project Facility. Just let me pause for a  
21 second. What happens is Dunkirk Power, LLC,  
22 actually leases the premises to the County of  
23 Chautauqua Industrial Development Agency which

1 we in turn sublease back to them with the  
2 obligation they make all the payments on the  
3 lease, PILOT payments and at the end of the  
4 stated term they purchase it back.

5 The Project Facility would be initially owned,  
6 operated and/or managed by the Applicant or  
7 such other entity as may be designated by the  
8 Applicant and agreed upon by the Agency.

9 The Company would receive financial assistance  
10 from the Agency in the form of potential  
11 exemptions or partial exemptions from sales and  
12 use taxes, mortgage recording taxes and real  
13 property taxes, but not including special  
14 assessments and ad valorem taxes, collectively  
15 known as the financial assistance.

16 Notice of the public hearing was published in  
17 the Observer March 20, 2008 and provided to the  
18 chief executive officer of each effected tax  
19 jurisdiction. The purpose of this hearing is  
20 to provide an opportunity for all interested  
21 parties to present their views both orally and  
22 in writing with respect to the project.

23 Before I ask for comments, just a few other

1 housekeeping measures. As I mentioned  
2 previously, the hearing is being transcribed  
3 and will be sent to all of the members of the  
4 County of Chautauqua, Members of the Board of  
5 the County of Chautauqua Industrial Development  
6 Agency. The Board will consider these comments  
7 tonight as well as the application as well as  
8 other related matters at a public hearing  
9 scheduled for Friday, April 25th, at 10 a.m. at  
10 the Clarion Hotel.  
11 In order to introduce some of the conversation  
12 that has gone on among the various taxing  
13 jurisdictions, and I must stop and pause for a  
14 personal note and on behalf of the County of  
15 Chautauqua IDA thank those who have attempted  
16 to facilitate conversations among the applicant  
17 and taxing authorities. There has been a  
18 delightful and meaningful, candid conversation  
19 which has occurred, really since the beginning  
20 of November. As a result of that conversation  
21 we are going to be looking at and have Richard  
22 Dixon, the Chief Financial Officer of the  
23 County of Chautauqua IDA, comment on the

1 proposed tax payment, proposed PILOT and I  
2 underscore both as proposed as obviously no  
3 action has been taken by the Board of the  
4 County of Chautauqua Industrial Development  
5 Agency. This is the most current proposal.  
6 One of the reasons for the hearing today is  
7 that this is a deviation from what would  
8 normally be a County of Chautauqua Industrial  
9 Development Agency standard protocol. When we  
10 get an application we have a tax exemption  
11 policy which in essence permits a ten year tax  
12 lease and PILOT and potential tax abatement of  
13 50 percent. That's our standard tax exemption  
14 policy. In addition with any tax lease or  
15 PILOT, in the absence of the agreement among  
16 the taxing authorities, the split of the  
17 dollars among the taxing authorities shall be  
18 an amount that the taxing jurisdictions would  
19 get if there was not a tax exemption.  
20 Tonight's hearing deals with the fact that  
21 we're, the Applicant, is proposing a 20 year  
22 tax lease and appropriate PILOT and that the  
23 proposed PILOT payments are in an amount which



1 is different than the standard 50 percent,  
2 hence a deviation proceeding, hence the reason  
3 for the public hearing tonight.  
4 Before, again, I ask for public comment, Rich,  
5 if you would like to talk and let me do this,  
6 let me give you this mic.  
7 MR. DIXON: Good evening, my name is Richard  
8 Dixon. I'm the chief financial officer for the  
9 County of Chautauqua Industrial Development  
10 Agency. What we have on the screen is as known  
11 as Exhibit B. Some of us have another name for  
12 it. We have gone through many, many, many  
13 variations of this. This is the latest as of  
14 today. Again, this is proposed.  
15 So, if we start, we have a 20 year PILOT, as  
16 Greg said these payments are arranged by  
17 assessment year, not by calendar year. We  
18 start with a payment on December 31st of 2008  
19 of \$5,090,000. That payment is fixed and  
20 stands alone. We then move to January 31st,  
21 2009, which is part of the 2009 calendar year,  
22 and there will be an initial payment  
23 \$3,570,000. On December 31st of 2009, you see

1           it says, the first line says variable payment.  
2           There will be a calculation made based on "I",  
3           the calculation of variable payment. PILOT  
4           payments are reimbursed in the empire zone  
5           based on the company's federal depreciable  
6           basis. IDA will calculate that times a number  
7           on the state claim form, QEZE, they will then  
8           subtract an initial payment and make the final  
9           payment.  
10          We move then to January 31st, 2010 \$3,500,000,  
11          on December 31st of 2010 NRG will calculate  
12          QEZE again and we hope the depreciable basis,  
13          we hope goes up dramatically, they will make a  
14          calculation and send the difference in.  
15          January 31st, 2011 they make another payment of  
16          \$3,500,000 and December 31st, 2011, which is  
17          the last variable payment they will calculate  
18          their federal depreciable basis times the QEZE  
19          rate, subtract the initial payment and send the  
20          difference.  
21          At that point we start fixed payments  
22          throughout the remainder of the PILOT and  
23          that's self-explanatory as to what they are.

1           The negotiation all along has been to try to  
2           maximize the reimbursement that the taxing  
3           jurisdictions can get utilizing the way the  
4           empire zone works and the way the tax law works  
5           and the way New York State treats these things.  
6           So, that is the proposal as of today. That's  
7           all. Greg?

8           MR. PETERSON: Thank you Rich, and just for the  
9           record, the Applicant, Dunkirk Power, LLC, as  
10          represented, they anticipate around, if not in  
11          excess of, \$140,000,000 in capital improvement  
12          to the facilities in order to comply with New  
13          York State Department of Environmental  
14          Conservation Consent Order.

15          At this time I will open this up for public  
16          comment. Except for those members that  
17          represent taxing jurisdictions I'm going to  
18          impose the three minute time limit on your  
19          remarks. When you come to the podium state  
20          your name and your position. You can remain  
21          anonymous on where you live.

22          MR. EDWARDS: Nothing against you, Greg, but  
23          I'll make my remarks and address them this way

1 and I trust our transcriptionist can get this  
2 done.

3 I'm Greg Edwards, I'm County Executive for  
4 Chautauqua County. I want to thank all of you  
5 for coming. I also want to take a moment to  
6 thank those who invested a great deal to get us  
7 to this point, and the people who have made the  
8 most significant investment are those who have  
9 been involved with me and the other taxing  
10 jurisdictions, and that's the City of Dunkirk,  
11 Mayor Frey, his finance team, his attorneys and  
12 his council members who have been at every one  
13 of the meetings as the other taxing entities  
14 have. I've been a firm believer, since I was a  
15 child, that anything worth doing takes time and  
16 energy and certainly the City of Dunkirk has  
17 invested that time and energy in working with  
18 us and Dunkirk City Schools, their  
19 superintendent, their business finance officers  
20 and theirs attorneys. They, too, have invested  
21 a great deal of time and energy working through  
22 this process. I'd also like to personally  
23 thank the Chautauqua County Attorney and Darin

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1 Schulz, Finance Director and others at the  
2 county level. I see Keith Ahlstrom is here  
3 tonight as well and he has invested time in  
4 this to make sure we get it as right as we  
5 possibly can because we're dealing with a very  
6 important issue.  
7 The process from the original beginning was  
8 designed to engage everyone that had a stake in  
9 this, that is the taxing authorities, have the  
10 meetings attended well, negotiated fairly and  
11 my comments this evening with regard to the  
12 taxing entities is a thank you for investing  
13 that time. I think the work product will show  
14 that investment and IDA has been very clear  
15 about what their role and authority is and  
16 working very well for the process and keeping  
17 us all informed and NRG has been an active  
18 partner in this, having not only their local  
19 people, but having applied the resources of the  
20 manager in significant ways, upper management  
21 as well as their finance team and attorneys all  
22 involved with the process.  
23 My comments are this is important work,

1 significant work. We had a great cooperation  
2 and involvement by all parties. So, thank you  
3 very much.

4 MR. PETERSON: Thank you Greg. Gary, you  
5 indicated you wanted to say something?

6 MR. CERNE: Good evening, I'm Gary Cerne,  
7 Superintendent of Schools. First of all,  
8 please let me begin by thanking you, Mr. Dixon  
9 and Mr. Daly and Mr. Peterson.

10 As County Executive Edwards mentioned, this was  
11 a collaborative effort. We spent a lot of time  
12 together. I think the effort has been done  
13 very well. I'd also like to thank Mayor Frey  
14 and County Executive Edwards and in particular  
15 please let me thank a very humble individual,  
16 Mr. Will Thiel, who's our business manager, he  
17 has put in countless hours and he has done an  
18 outstanding job.

19 Is it perfect? We're not sure. As you look at  
20 the overhead there are some years where there  
21 is a little bit of uncertainty. There are  
22 three things we are certain about. First of  
23 all, from a school district standpoint, it

1 helps maintain our foundation aid. As you know  
2 without following foundation tax rules the  
3 school district will be losing a significant  
4 amount of State aid. With this situation we  
5 maintain our current level of State aid which  
6 is vital to the school district.  
7 The second thing we know, it's an increase from  
8 the old PILOT, which is a good thing and the  
9 final thing, and one thing that keeps getting  
10 lost a little bit in the discussion is with  
11 this PILOT all the challenges to the assessment  
12 by NRG go away and as you know with the  
13 challenges that could happen we could all be  
14 looking at giving money back in the form of  
15 reimbursement.  
16 With those things in mind, again, I want to  
17 thank the IDA, Mr. Peterson and again thanks to  
18 the Mayor's Office and County Executive's  
19 Office for a truly collaborative effort.  
20 MR. PETERSON: Thank you, Gary. Mayor Frey?  
21 MAYOR FREY: Good evening everybody, and thank  
22 you for your time tonight.  
23 During the last meeting between NRG and the

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1           taxing jurisdictions on April 4th, Lee Davis,  
2           an NRG representative stood in front of this  
3           group and stated "NRG's budget model does not  
4           include NRG paying taxes." This alleged  
5           inability to do business while paying their  
6           taxes would seem to make their business model  
7           as unworkable as this PILOT is for the City of  
8           Dunkirk. After nine months of negotiations,  
9           the City received the most recent draft of the  
10          agreement at 9:00 a.m. this morning. This  
11          latest draft Agreement includes a cover letter  
12          from NRG's attorney which states that it is  
13          "subject to" review and agreement by the  
14          Company. This means that the discussion of  
15          this Agreement is a moot point as it has not  
16          been approved by anyone. This 11th hour tactic  
17          has been commonly used by both NRG and the IDA  
18          throughout the process. This latest draft is  
19          significantly different from which the parties  
20          had tentatively agreed to during their last  
21          meeting on April 4th, and which the Mayor  
22          subsequently publicly supported. These  
23          differences include a drastically different



1 financial picture, in which the City will  
2 receive millions of dollars less over the life  
3 of the Agreement.  
4 During one of the early meetings, County  
5 Executive Greg Edwards stated that a PILOT  
6 Agreement would be good for everyone as it  
7 provides tax certainty into the future. Yet,  
8 all this Agreement does is ensure tax  
9 uncertainty for the taxing jurisdictions while  
10 guaranteeing NRG's maximum tax liability. All  
11 three taxing jurisdictions will have severe  
12 difficulty budgeting for the next four years,  
13 as the PILOT payments will remain undetermined  
14 until after their budgets are prepared. The  
15 City will have \$6 million worth of budget  
16 uncertainty over the first four years of the  
17 agreement alone. Additionally, NRG has the  
18 right to terminate the entire Agreement in 2009  
19 based on factors wholly within their control,  
20 after having received some of the benefits of  
21 the Agreement. One of the most disturbing  
22 provisions of the Agreement is that NRG will  
23 potentially receive tax credits from the taxing

1 jurisdictions which can be used at their  
2 unrestricted discretion. This not only  
3 increases budget uncertainty but creates a  
4 situation in which the City is subsidizing NRG  
5 with NRG bearing no relative tax burden.  
6 One of the benefits of a PILOT is that it is  
7 supposed to eliminate costly tax litigation.  
8 However, this Agreement allows NRG to still  
9 bring tax litigation in several circumstances.  
10 NRG has consistently made the argument that if  
11 they do not receive a PILOT there could be a  
12 loss of jobs in the City. However, the latest  
13 version of the Agreement does not contain any  
14 guarantee regarding jobs.  
15 When we asked NRG to put their scheduled plant  
16 expansion in writing Rich Dixon told us "You  
17 can't dictate how NRG runs their business."  
18 Unless the IDA, which has the ultimate legal  
19 authority to determine the terms of the PILOT,  
20 takes some action other than merely approving  
21 the Agreement, the IDA is going to allow NRG to  
22 significantly dictate how the City of Dunkirk  
23 will be run.

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1           The bottom line is that the City of Dunkirk has  
2           negotiated in good faith for nine months, only  
3           to have the Agreement drastically changed the  
4           morning of the public hearing. We were told  
5           NRG's budget model does not include NRG paying  
6           taxes. Under this PILOT they will not have to,  
7           as the residents of Dunkirk will be paying  
8           their taxes for them. Thank you for your time.  
9           MR. PETERSON: Thank you, Mr. Mayor. Anybody  
10          else who would like to be heard? Yes, sir.  
11          MR. MIRTH: I'm Richard Mirth, 119 Eighth  
12          Green, Dunkirk.  
13          I'm a registered civil engineer. My work  
14          experience has been in engineering materials,  
15          structural analysis, soil mechanics, highway  
16          engineering, construction on permafrost,  
17          protective structures, university teaching,  
18          forensic engineering, and engineering  
19          economics.  
20          I would like to discuss the proposed payment in  
21          lieu of taxes (PILOT) agreement for the NRG  
22          power station.  
23          Because we in Chautauqua County and Dunkirk

1           have too many layers of government,  
2           administratively fragmented schools and a  
3           declining population, we spend too much money  
4           on government services and schools. This  
5           spending creates a property tax rate that is  
6           among the highest in the nation. The high tax  
7           rate and a fair assess value for the power  
8           station will put NRG at a competitive  
9           disadvantage when selling power produced at  
10          Dunkirk. Therefore a PILOT for the Dunkirk  
11          plant seems essential to provide an environment  
12          in which NRG can compete.  
13          However, there are two concerns regarding such  
14          a PILOT Agreement.  
15          First, the approximately \$21 million assessment  
16          sought by NRG is absurd. The replacement value  
17          of the present power station is over \$1.4  
18          billion. Even at our present property tax rate  
19          such an assessment will produce a tax revenue  
20          that is unfair to the county, city and school  
21          district. With proper maintenance, upgrading  
22          and considering the accelerating cost of new  
23          plant constructions, the value of the plant has

1           increased since the beginning of the last PILOT  
2           agreement.  
3           Second, the previous PILOT agreement did little  
4           but attempt to preserve the status quo for the  
5           city and school district finances. The new  
6           PILOT must encourage growth in the area that  
7           will benefit both NRG and the community. We  
8           feel there is potential for NRG to act as a  
9           corporate partner on projects that affect the  
10          economic future of Chautauqua County. In  
11          return they will benefit from lower property  
12          taxes, the profit and publicity benefits of the  
13          projects and the increased prosperity of the  
14          area.  
15          Examples of projects that might benefit all  
16          parties are: Condominiums on the NRG site west  
17          of the Dunkirk Harbor. A high rise condo on  
18          this site commands a beautiful view of the  
19          harbor and would occupy land that is presently  
20          vacant. Resident spending will improve the  
21          cash flow of the City and construction and sale  
22          of the units could be a profit center for NRG.  
23          Area wide heating. A high pressure hot water

1 system using waste heat from the power station  
2 would be used to supply heat to industrial  
3 areas or homes. In Europe power stations  
4 derive a major portion of their profit from  
5 selling their waste heat. Heating the condo  
6 discussed previously might be one component of  
7 such a system.

8 Wind turbines on the outer break wall. Three  
9 large wind turbines could be located just  
10 inside the east-west leg of the outer break  
11 wall. This project would be a prototype for  
12 offshore projects on the Great Lakes. The  
13 break wall offers protection from ice flows and  
14 the shallow water adjacent to the wall might  
15 simplify foundation construction. Connection  
16 to the power grid is only a short distance away  
17 at the NRG site. The concept is extendable to  
18 the Buffalo harbor and the western basin of  
19 Lake Erie. The project will provide revenue  
20 and attract visitors to the area.

21 Drilling for natural gas in the Marcellus  
22 State. Drilling is presently underway in  
23 Pennsylvania to tap the natural gas trapped in

1 the Marcellus Shale formation which lies deep  
2 beneath Chautauqua County. Researchers at SUNY  
3 Fredonia have estimated there are large  
4 deposits of natural gas trapped in there.  
5 Perhaps an IDA coordinated project with the  
6 wellhead located on the NRG site could provide  
7 the start of a major new industry for  
8 Chautauqua County.  
9 Certainly other ideas will arise if the new  
10 PILOT can be used to improve the economy of the  
11 region.  
12 Again, the purpose of the new PILOT should not  
13 be only to provide some funding for government  
14 and schools, but also provide for NRG  
15 participation and efforts to attract people,  
16 private investment and new industry to the  
17 region. We must go beyond preserving the  
18 status quo.  
19 MR. PETERSON: Thank you Mr. Mirth. Anybody  
20 else who desires being heard? I guess  
21 therefore no one coming forward, on behalf of  
22 the Agency I would like to thank the members of  
23 the public, various members of the taxing

1           authorities for attending this hearing and  
2           further commenting for the project.  It's now  
3           7:30 p.m., I now call this hearing to a close.  
4           Thank you for coming.  
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