

FINAL RESOLUTION
(Duke Energy Renewables Solar LLC)
1918 State Route 12D and 1719 State Route 12D

A meeting of the County of Lewis Industrial Development Agency was convened in public session on December 3, 2020 at 8:00 AM local time.

On motion duly made and seconded during the course of the meeting the following resolution was placed before the members of the County of Lewis Industrial Development Agency:

RESOLUTION OF THE LEWIS COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") (i) ACKNOWLEDGING THE PUBLIC HEARING HELD WITH RESPECT TO THE DUKE ENERGY RENEWABLES SOLAR LLC PROJECT AT 1918 STATE ROUTE AND 1719 STATE ROUTE 12D (AS MORE FULLY DESCRIBED BELOW) ON OCTOBER 7, 2020; (ii) AUTHORIZING FINANCIAL ASSISTANCE (AS MORE FULLY DESCRIBED BELOW) FOR THE BENEFIT OF THE DUKE ENERGY RENEWABLES SOLAR LLC PROJECT; (iii) AND AUTHORIZING THE EXECUTION AND DELIVERY OF A PROJECT AGREEMENT, LEASE AGREEMENT, LEASEBACK AGREEMENT, TAX AGREEMENT, MORTGAGE AND RELATED DOCUMENTS WITH RESPECT TO THE PROJECT.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 62 of the Laws of 1973 of the State of New York, as amended and codified as Section 903 of the General Municipal Law (the "Act"), the COUNTY OF LEWIS INDUSTRIAL DEVELOPMENT AGENCY (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, DUKE ENERGY RENEWABLES SOLAR LLC, for itself or on behalf of an entity to be formed (collectively, the "Company") previously submitted an application (the "Application") to the Agency, a copy of which is on file at the office of the Agency, requesting the Agency's assistance with a certain project (the "Project") consisting of: (A) the acquisition, installation, construction and operation of up to a 15 MW AC solar power generation array (the "Improvements") on lands owned by Thomas Krywosa located at 1918 State Route 12D in the Town of Leyden, Lewis County, New York (Tax Map No. 403.00-01-07.100) and on the lands or Nancy Wheelock located at 1719 State Route 12D in the Town of Leyden, Lewis County, New York (Tax Map No. 403.00-01-11.000) with the Point of Interconnect located at the northeast corner of the Krywosa parcel consisting in total of approximately 72 acres of the 173 acre site (the "Land") for the purpose of operating a solar energy facility and (B) the acquisition and installation of machinery, equipment and other tangible personal property in, upon and around the Improvements and the Land (the "Equipment"; and collectively with the Land and the Improvements, the "Facility"), and (C) paying certain costs and expenses incidental to those activities (the costs associated with items A and B above being hereinafter collectively referred to as "Project Costs"); and

WHEREAS, by Resolution adopted by the Agency on September 5, 2019 (the "Inducement Resolution"), the Agency accepted the Application as submitted by the Company and, among other things, (i) described the Financial Assistance (as defined below) being contemplated by the Agency and (ii) authorized the Agency to hold a public hearing regarding the contemplated Financial Assistance; and

WHEREAS, pursuant to General Municipal Law Section 859-a, on October 7, 2020 at Town Hall of the Town of Leyden located at 6606 School Road in the Town of Leyden, the Agency held a public hearing with respect to the Project and the proposed Financial Assistance being contemplated by the Agency (the "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 the Public Hearing along with the Notice of the Public Hearing published and forwarded to the affected taxing jurisdictions at least ten (10) days prior to said Public Hearing are attached hereto as Exhibit A; and

WHEREAS, the Town of Leyden, as lead agency, (1) on May 14, 2019 accepted an environmental impact statement prepared with respect to the Project as the final environmental impact statement with respect thereto, pursuant to New York's State Environmental Quality Review Act and regulations promulgated pursuant thereto ("SEQRA"), and (2) on August 7, 2019 adopted a statement of findings and decision relative to the environmental impact statement as the lead agency written findings statement relative to the Project, as required by SEQRA; and

WHEREAS, the Agency desires to adopt a resolution (i) acknowledging that the Public Hearing was held in compliance with the Act; (ii) authorizing the negotiation, execution and delivery by the Agency of the Project Agreement, the Lease Agreement, the Leaseback Agreement, the Tax Agreement and related documents (as each is defined in the Inducement Resolution); and (iii) providing Financial Assistance to the Company in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction, and equipping of the Facility and (b) a partial real property tax abatement structured with the Tax agreement (collectively, the "Financial Assistance"); and

WHEREAS, the Project Agreement, the Lease Agreement, the Leaseback Agreement, the Tax Agreement, and related documents are being negotiated and will be presented for execution and delivery subject to approval of this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE COUNTY OF LEWIS INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The Agency hereby adopts the SEQRA findings statement of the Town of Leyden as the Agency's written findings statement relative to the Project; and

Section 2. The Public Hearing held by the Agency on October 7, 2020 at the Leyden Town Hall concerning the Project and the Financial Assistance was duly held in accordance with the Act, including, but not limited to, the giving of at least ten (10) days published notice of the Public Hearing (such notice also provided to the chief executive officer of each affected tax jurisdiction), affording interested parties a reasonable opportunity, both orally and in writing, to present their views with respect to the Project.

Section 3. The Agency is hereby authorized to provide to the Company financial assistance in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction, reconstruction, renovation and equipping of the Project and (b) a partial real property tax abatement structured through the Tax Agreement (the "Financial Assistance").

Section 4. Based upon the representation and warranties made by the Company in the Application, the Agency hereby authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Project that would otherwise be subject to New York State and local sales tax and use tax in an amount up to approximately \$18,500,000 which result in New York State and local sales and use tax exemption benefits ("Sales and Use Tax Exemption Benefits") not to exceed \$1,480,000. The Agency agrees to consider any requests by the Company for increase 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, and , to the extent required, the Agency authorizes and conducts any supplemental public hearing(s).

Section 5. 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 Project, and 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; (iii) the Sales and Use Tax Exemption Benefits are for property or services not authorized by the Agency as part of the Project; (iv) the Company has made a material false statement on its application for financial assistance; (v) 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 Project; (vi) the Company obtains real property tax abatements and 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 Project (collectively, items (i) through (vi) are hereby defined as a "Recapture Event").

As a condition precedent of receiving Sales and Use Tax Exemption Benefits and real property tax abatement benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must (i) if a Recapture Event determination is made by the Agency, cooperate with the Agency in its efforts to recover or recapture and Sales and Use Tax Exemption Benefits, and/or real property tax abatements benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands, if and so required to be paid over as determined by the Agency.

Section 6. 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 Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, construction and equipping of the Project: (i) to acquire, reconstruct, renovate and

equip the Project; (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, and (iii) in general, to do all things which may be requisite or proper for completing the Project, provided, however, the Project Agreement shall expire on December 31, 2022 (unless extended for good cause by the Executive Director of the Agency) if the Lease Agreement, the Leaseback Agreement and the Tax Agreement contemplated have not been executed and delivered.

Section 7. The Chairperson, the Vice Chairperson and/or the Executive Director of the Agency are hereby authorized, on behalf of the Agency, to negotiate and execute (A) the Project Agreement, pursuant to which the Agency will appoint the Company as its agent to undertake the Project, (B) The Lease Agreement, pursuant to which the Company leases the Project to the Agency, (C) the Leaseback Agreement, pursuant to which the Agency leases its interest in the Project back to the Company; and (D) the Tax Agreement (the terms of which shall provide a full exemption from ad valorem taxation with respect to the Facility, provided, however, the Company must satisfy certain conditions for such exemption as set forth in the Tax Agreement); provided (i) the rental payments under the Leaseback Agreement include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project; and (ii) the terms of the Tax Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with.

Section 8. The Chairperson, Vice Chairperson and/or Executive Director of the Agency are hereby authorized, on behalf of the Agency, to execute, deliver and record any security agreement, UCC-1 Financing Statements and all documents reasonably contemplated by these resolutions or required by any lender/financial institution identified by the Company (the "Lender") up to a maximum principal amount necessary to undertake the Project, acquire the Facility and/or finance or re-finance equipment and other personal property and related transactional costs (hereinafter, with the Lease Agreement, Leaseback Agreement and Tax Agreement, collectively called the "Agency Documents"); and where appropriate, the Secretary of the Agency is hereby authorized to affix the seal of the Agency to the Agency Documents and to attest the same, all with such changes, variations, omissions and insertions as the Chairperson, Vice Chairperson and/or Executive Director of the Agency shall approve, the execution thereof by the Chairperson, Vice Chairperson and/or Executive Director of the Agency to constitute conclusive evidence of such approval; provided in all events recourse against the Agency is limited to the Agency's interest in the Project.

Section 9. 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 10. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to vote of the members on roll call, and the result was as follows:

	<u>Yea</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Joseph Lawrence	[X]	[]	[]	[]
Ron Burns	[X]	[]	[]	[]
Darlene Rowsam	[X]	[]	[]	[]
Gagan Singh	[]	[]	[]	[X]
Jerry Cayer	[X]	[]	[]	[]
Thomas Gillette	[X]	[]	[]	[]

The Resolution was thereupon duly adopted.