

Date: February 5, 2025

At a meeting of the Town of Brookhaven Industrial Development Agency (the “Agency”), held on the 5th day of February, 2025, at 1 Independence Hill, 2<sup>nd</sup> Floor, Farmingville, New York 11738, the following members of the Agency were:

Present: Frederick C. Braun III, Chairman  
Martin Callahan, Vice Chair  
Ann-Marie Scheidt, Secretary  
Mitchell H. Pally, Treasurer  
Frank C. Trotta, Asst. Treasurer  
John Rose, Member

Recused:

Excused: Felix J. Grucci, Jr., Asst. Secretary

Also Present: Lisa M. G. Mulligan, Chief Executive Officer  
Lori LaPonte, Chief Financial Officer  
Amy Illardo, Director of Marketing and Project Development  
Jocelyn Linse, Executive Assistant  
Annette Eaderesto, Esq., Counsel to the Agency  
Barry Carrigan, Esq., Transaction Counsel (via Zoom)  
Howard Gross, Esq., Transaction Counsel (via Zoom)  
Andrew Komaromi, Esq., Transaction Counsel

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to acquisition of a leasehold interest in and title to a certain industrial development facility more particularly described below (KCE NY 31, LLC 2025 Facility) and the leasing of the facility to KCE NY 31, LLC.

The following resolution was duly moved, seconded, discussed and adopted with the following members voting:

Voting Aye

Voting Nay

Braun  
Callahan  
Scheidt  
Pally  
Trotta  
Rose

RESOLUTION OF THE TOWN OF BROOKHAVEN  
INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE  
APPOINTMENT OF KCE NY 31, LLC, A DELAWARE  
LIMITED LIABILITY COMPANY, ON BEHALF OF ITSELF  
AND/OR THE PRINCIPALS OF KCE NY 31, LLC AND/OR AN  
ENTITY FORMED OR TO BE FORMED ON BEHALF OF ANY  
OF THE FOREGOING AS AGENT OF THE AGENCY FOR  
THE PURPOSE OF ACQUIRING, CONSTRUCTING AND  
EQUIPPING THE FACILITY, APPROVING THE  
ACQUISITION, CONSTRUCTION AND EQUIPPING OF  
SUCH INDUSTRIAL DEVELOPMENT FACILITY AND  
MAKING CERTAIN FINDINGS AND DETERMINATIONS  
WITH RESPECT TO THE FACILITY AND APPROVING THE  
FORM, SUBSTANCE AND EXECUTION OF RELATED  
DOCUMENTS

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 358 of the Laws of 1970 of the State of New York, as amended from time to time (collectively, the “**Act**”), the Town of Brookhaven Industrial Development Agency (the “**Agency**”), was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, KCE NY 31, LLC, a Delaware limited liability company, on behalf of itself and/or the principals of KCE NY 31, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), has applied to the Agency, to enter into a transaction in which the Agency will assist in the acquisition of a long term ground leasehold interest in an approximately 2.28 acre portion of an approximately 46.98 acre parcel of land, located at North Country Road, Shoreham, New York (more particularly described as Suffolk County Tax Map No. 0200-039.00-02.00-002.000) (the “**Land**”), owned by the Long Island Power Authority (the “**Owner**”), and the construction of an approximately 50MW/200MWh battery energy storage system thereon (the “**Improvements**”), and the equipping thereof, including, but not limited to, battery enclosures containing battery cells and electrical equipment, including electrical substation equipment (collectively, the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”), which Facility will be used by the Company to provide a battery energy storage system for the residents of the Town of Brookhaven (the “**Town**”), that will store excess energy and interject it back into the PSEG Long Island grid as needed (collectively, the “**Project**”); and

WHEREAS, the Agency will acquire a subleasehold interest in the Land and a leasehold interest in the Improvements pursuant to a certain Company Lease Agreement, dated as of February 1, 2025 or such other date as the Chairman, the Chief Executive Officer of the Agency and counsel to the Agency shall agree (the “**Company Lease**”), by and between the Company and the Agency; and

WHEREAS, the Agency will acquire title to the Equipment pursuant to a certain Bill of Sale, dated the Closing Date (as defined in the hereinafter defined Lease Agreement) (the “**Bill of Sale**”), from the Company to the Agency; and

WHEREAS, the Agency will sub-sublease the Land, sublease the Improvements and lease the Equipment to the Company pursuant to a certain Lease and Project Agreement, dated as of February 1, 2025 or such other date as the Chairman, the Chief Executive Officer of the Agency and counsel to the Agency shall agree (the “**Lease Agreement**”), by and between the Agency and the Company; and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company in the form of: (i) exemptions from sales and use taxes in an approximate amount not to exceed \$6,437,926.25, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility, and (ii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit C hereof); and

WHEREAS, in connection with the abatement of real property taxes as set forth in the PILOT Schedule on Exhibit C hereof, the current pro-rata allocation of PILOT payments to each affected tax jurisdiction in accordance with Section 858(15) of the Act and the estimated difference between the real property taxes on the Facility and the PILOT payments set forth on the PILOT Schedule on Exhibit C hereof are more fully described in the Cost Benefit Analysis (“**CBA**”) developed by the Agency in accordance with the provisions of Section 859-a(5)(b) of the Act, a copy of which CBA is attached hereto as Exhibit D; and

WHEREAS, the proposed Facility is an energy-related project whose purpose is to build a renewable energy generating facility; and the requested financial assistance is necessary to induce the Company to locate the Facility in the Town, thus increasing the economic health and well-being of residents of the Town; and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, a public hearing (the “**Hearing**”) was held on February 2, 2025 and notice of the Hearing was given and such notice (together with proof of publication) together with the minutes of the Hearing are in substantially in the form annexed hereto as Exhibits A and B respectively; and

WHEREAS, the Agency has given due consideration to the application of the Company and to representations by the Company that the proposed Facility is either an inducement to the Company to maintain and expand the Facility in the Town or is necessary to maintain the competitive position of the Company in its industry; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively, the “**SEQR Act**” or “**SEQR**”), the Agency constitutes a “Local Agency”; and

WHEREAS, to aid the Agency in determining whether the Facility may have a significant effect upon the environment, the Company has prepared and submitted to the Agency an Environmental Assessment Form (“EAF”) and related documents (collectively, the “**Questionnaire**”) with respect to the Facility, a copy of which is on file at the office of the Agency; and

WHEREAS, the Agency has reviewed the Questionnaire and such other documents as the Agency felt it necessary or appropriate to examine to adequately review the Facility; and

WHEREAS, based upon the Questionnaire and other information, the Facility constitutes a “Type 1” action under SEQR; and

WHEREAS, the Agency constitutes an “Involved Agency” (as defined in SEQR);

WHEREAS, PSEG reviewed the Facility as “Lead Agency” (as defined in SEQR) pursuant to the provisions of SEQR; and

WHEREAS, on December 17, 2024, the Lead Agency, following coordinated review, determined that the Facility would not have a significant impact on the environment, and adopted a negative declaration for the Facility; and

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the transfer of title to or a leasehold interest in the Facility to the Agency and the lease or sublease of the Facility to the Company; and

NOW, THEREFORE, BE IT RESOLVED by the Agency (a majority of the members thereof affirmatively concurring) as follows:

Section 1. Based upon the EAF completed by the Company and other representations and information furnished regarding the Facility, the Lead Agency determined that, based upon its review of the EAF, the appropriate criteria for determination of significance, and such other and further information which the Lead Agency felt necessary to review the Facility, the Facility would not have a “significant effect” on the environment and, therefore, an environmental impact statement will not be prepared. That determination constitutes a negative declaration for purposes of SEQR, which is binding on the Agency.

Section 2. The Agency hereby finds and determines:

(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) The Facility constitutes a “project”, as such term is defined in the Act; and

(c) The acquisition, construction and equipping of the Facility and the leasing of the Facility to the Company, will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of Town of Brookhaven, and the State of

New York and improve their standard of living and thereby serve the public purposes of the Act; and

(d) The acquisition, construction and equipping of the Facility is reasonably necessary to induce the Company to locate the Facility in the Town, thus increasing the economic health and well being of the residents of the Town; and

(e) Based upon representations of the Company and counsel to the Company, the Facility conforms with the local zoning laws and planning regulations of the Town of Brookhaven, Suffolk County, and all regional and local land use plans for the area in which the Facility is located; and

(f) It is desirable and in the public interest for the Agency to lease the Facility to the Company; and

(g) The Company Lease will be an effective instrument whereby the Agency subleases the Land and leases the Improvements from the Company; and

(h) The Lease Agreement will be an effective instrument whereby the Agency sub-subleases, subleases and leases the Facility to the Company, the Agency and the Company set forth the terms and conditions of their agreement regarding payments-in-lieu of taxes, the Company agrees to comply with all Environmental Laws (as defined therein) applicable to the Facility and will describe the circumstances in which the Agency may recapture some or all of the benefits granted to the Company; and

Section 3. The Agency has assessed all material information included in connection with the Company's application for financial assistance, including but not limited to, the cost-benefit analysis prepared by the Agency and such information has provided the Agency a reasonable basis for its decision to provide the financial assistance described herein to the Company.

Section 4. In consequence of the foregoing, the Agency hereby determines to: (i) sublease the Land and lease the Improvements from the Company pursuant to the Company Lease, (ii) execute, deliver and perform the Company Lease, (iii) lease, sublease and sub-sublease the Facility to the Company pursuant to the Lease Agreement, (iv) execute, deliver and perform the Lease Agreement, and (v) execute and deliver any financing or refinancing documents reasonably requested by a lender or lenders.

Section 5. The Agency is hereby authorized to acquire the real property and personal property described in Exhibit A and Exhibit B, respectively, to the Lease Agreement, and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition are hereby approved, ratified and confirmed.

Section 6. The Agency hereby authorizes and approves the following economic benefits to be granted to the Company in connection with the acquisition, construction and equipping of the Facility in the form of: (i) exemptions from sales and use taxes in an approximate amount not to exceed \$6,437,926.25, in connection with the purchase or lease of

equipment, building materials, services or other personal property with respect to the Facility, and (ii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit C hereof), all consistent with the policies of the Agency. In connection with the abatement of real property taxes as set forth in the PILOT Schedule on Exhibit C hereof, the current pro-rata allocation of PILOT payments to each affected tax jurisdiction in accordance with Section 858(15) of the Act and the estimated difference between the real property taxes on the Facility and the PILOT payments set forth on the PILOT Schedule on Exhibit C hereof are more fully described in the CBA developed by the Agency in accordance with the provisions of Section 859-a(5)(b) of the Act, a copy of which CBA is attached hereto as Exhibit D.

Section 7. Subject to the provisions of this resolution, the Company is herewith and hereby appointed the agent of the Agency to acquire, construct and equip the Facility. The Company is hereby empowered to delegate its status as agent of the Agency to its agents, subagents, contractors, subcontractors, materialmen, suppliers, vendors and such other parties as the Company may choose in order to acquire, construct and equip the Facility. The Agency hereby appoints the agents, subagents, contractors, subcontractors, materialmen, vendors and suppliers of the Company as agents of the Agency solely for purposes of making sales or leases of goods, services and supplies to the Facility, and any such transaction between any agent, subagent, contractor, subcontractor, materialmen, vendor or supplier, and the Company, as agent of the Agency, shall be deemed to be on behalf of the Agency and for the benefit of the Facility. This agency appointment expressly excludes the purchase by the Company of any motor vehicles, including any cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles for use on public highways or streets. The Company shall indemnify the Agency with respect to any transaction of any kind between and among the agents, subagents, contractors, subcontractors, materialmen, vendors and/or suppliers and the Company, as agent of the Agency. The aforesaid appointment of the Company as agent of the Agency to acquire, construct and equip the Facility shall expire at the earlier of (a) the completion of such activities and improvements, (b) a date which the Agency designates, or (c) the date on which the Company has received exemptions from sales and use taxes in an amount not to exceed \$6,437,926.25, in connection with the purchase or lease of equipment, building materials, services or other personal property; provided however, such appointment may be extended at the discretion of the Agency, upon the written request of the Company if such activities and improvements are not completed by such time. The aforesaid appointment of the Company is subject to the completion of the transaction and the execution of the documents contemplated by this resolution.

Section 8. The Company is hereby notified that it will be required to comply with Section 875 of the Act. The Company shall be required to agree to the terms of Section 875 pursuant to the Lease Agreement. The Company is further notified that the tax exemptions and abatements provided pursuant to the Act and the appointment of the Company as agent of the Agency pursuant to this Authorizing Resolution are subject to termination and recapture of benefits pursuant to Sections 859-a and 875 of the Act and the recapture provisions of the Lease Agreement.

Section 9. The form and substance of the Company Lease and the Lease Agreement to which the Agency is a party (each in substantially the forms presented to or approved by the Agency and which, prior to the execution and delivery thereof, may be redated and renamed) are hereby approved.

Section 10.

(a) The Chairman, the Chief Executive Officer of the Agency or any member of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Company Lease and the Lease Agreement to which the Agency is a party, all in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, the Chief Executive Officer of the Agency or any member of the Agency shall approve, and such other related documents as may be, in the judgment of the Chairman and counsel to the Agency, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the “**Agency Documents**”). The execution thereof by the Chairman, the Chief Executive Officer of the Agency or any member of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, the Chief Executive Officer of the Agency or any member of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement).

Section 11. 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 or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, 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 resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 12. Any expenses incurred by the Agency with respect to the Facility shall be paid by the Company. The Company agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Facility.

Section 13. This resolution shall take effect immediately.

ADOPTED: February 5, 2025

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

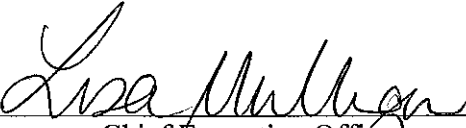
I, the undersigned Chief Executive Officer of the Town of Brookhaven Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Town of Brookhaven Industrial Development Agency (the “Agency”), including the resolutions contained therein, held on the 5th day of February, 2025, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

That the Agency Documents contained in this transcript of proceedings are each in substantially the form presented to the Agency and/or approved by said meeting.

I FURTHER CERTIFY that public notice of the time and place of said meeting was duly given to the public and the news media in accordance with the New York Open Meetings Law, constituting Chapter 511 of the Laws of 1976 of the State of New York, that all members of said Agency had due notice of said meeting and that the meeting was all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand as of the 5th day of February, 2025.

By:   
Chief Executive Officer



## EXHIBIT A

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### NOTICE OF PUBLIC HEARING

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NOTICE IS HEREBY GIVEN that a public hearing pursuant to Article 18-A of the New York State General Municipal Law will be held by the Town of Brookhaven Industrial Development Agency (the “**Agency**”) on the 5<sup>th</sup> day of February, 2025, at 9:15 a.m. local time, at Town of Brookhaven Town Hall, 1 Independence Hill, Farmingville, New York 11738, in connection with the following matters:

KCE NY 31, LLC, a Delaware limited liability company, on behalf of itself and/or the principals of KCE NY 31, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), has applied to the Agency, to enter into a transaction in which the Agency will assist in the acquisition of a long term ground leasehold interest in an approximately 2.28 acre portion of an approximately 46.98 acre parcel of land, located at North Country Road, Shoreham, New York (more particularly described as Suffolk County Tax Map No. 0200-039.00-02.00-002.000) (the “**Land**”), owned by the Long Island Power Authority (the “**Owner**”), and the construction of an approximately 50MW/200MWh battery energy storage system thereon (the “**Improvements**”), and the equipping thereof, including, but not limited to, battery enclosures containing battery cells and electrical equipment, including electrical substation equipment (collectively, the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”), which Facility will be used by the Company to provide a battery energy storage system for the residents of the Town of Brookhaven (the “**Town**”), that will store excess energy and interject it back into the PSEG Long Island grid as needed (collectively, the “**Project**”). The Facility will be initially owned, operated and/or managed by the Company.

The Agency will acquire a subleasehold interest in the Land, a leasehold interest in the Improvements and title to or a leasehold interest in the Equipment and will sub-lease, sublease and lease the Facility to the Company. The Agency contemplates that it will provide financial assistance to the Company in the form of exemptions from sales and use taxes and abatement of real property taxes, consistent with the policies of the Agency.

A representative of the Agency will at the above-stated time and place hear and accept written comments from all persons with views in favor of or opposed to either the proposed financial assistance to the Company or the location or nature of the Facility. At the hearing, all persons will have the opportunity to review the application for financial assistance filed by the Company with the Agency and an analysis of the costs and benefits of the proposed Facility.

Dated: January 26, 2025

TOWN OF BROOKHAVEN INDUSTRIAL  
DEVELOPMENT AGENCY

By: Lisa MG Mulligan  
Title: Chief Executive Officer

EXHIBIT B

MINUTES OF PUBLIC HEARING HELD ON  
FEBRUARY 5, 2025 AT 9:15 A.M.

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY  
(KCE NY 31, LLC 2025 FACILITY)

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Section 1. Lisa MG Mulligan, Chief Executive Officer of the Town of Brookhaven Industrial Development Agency (the “**Agency**”) called the hearing to order.

Section 2. Lisa MG Mulligan then appointed herself the hearing officer of the Agency, to record the minutes of the hearing.

Section 3. The hearing officer then described the proposed transfer of the real estate, the other financial assistance proposed by the Agency and the location and nature of the Facility as follows:

KCE NY 31, LLC, a Delaware limited liability company, on behalf of itself and/or the principals of KCE NY 31, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), has applied to the Agency, to enter into a transaction in which the Agency will assist in the acquisition of a long term ground leasehold interest in an approximately 2.28 acre portion of an approximately 46.98 acre parcel of land, located at North Country Road, Shoreham, New York (more particularly described as Suffolk County Tax Map No. 0200-039.00-02.00-002.000) (the “**Land**”), owned by the Long Island Power Authority (the “**Owner**”), and the construction of an approximately 50MW/200MWh battery energy storage system thereon (the “**Improvements**”), and the equipping thereof, including, but not limited to, battery enclosures containing battery cells and electrical equipment, including electrical substation equipment (collectively, the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”), which Facility will be used by the Company to provide a battery energy storage system for the residents of the Town of Brookhaven (the “**Town**”), that will store excess energy and interject it back into the PSEG Long Island grid as needed (collectively, the “**Project**”). The Facility will be initially owned and managed or operated by the Company.

The Agency will acquire a subleasehold interest in the Land, a leasehold interest in the Improvements and title to or a leasehold interest in the Equipment and will sub-lease, sublease and lease the Facility to the Company. The Agency contemplates that it will provide financial assistance to the Company in the form

of exemptions from sales and use taxes and abatement of real property taxes, consistent with the policies of the Agency.

Section 4. The hearing officer then opened the hearing for comments from the floor for or against the proposed transfer of real estate, the other financial assistance proposed by the Agency and the location and nature of the Facility. The following is a listing of the persons heard and a summary of their views:

Christopher W. Shishko, Guercio & Guercio, LLP

Gerard Poole, Shoreham Wading River School District

Glen Arcuri, Shoreham Wading River School District

See link below:

<https://www.youtube.com/watch?v=EANLHUejEQI>

Section 5. The hearing officer then asked if there were any further comments, and, there being none, the hearing was closed at 9:45 a.m.



EXHIBIT C

Proposed PILOT Schedule

Schedule of payments-in-lieu-of-taxes: Town of Brookhaven, (including any existing incorporated village and any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located), Shoreham – Wading River School District, Suffolk County and Appropriate Special Districts

Definitions:

Normal Tax Due = Those payments for taxes and assessments, other than special ad valorem levies, special assessments and service charges against real property located in the Town of Brookhaven (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located), Shoreham – Wading River School District, Suffolk County which are or may be imposed for special improvements or special district improvements, that the Company would pay without exemption.

<u>Year</u>	<u>Payment</u>
1	\$100,000.00
2	\$100,000.00
3	\$100,000.00
4	\$100,000.00
5	\$100,000.00
6	\$112,500.00
7	\$112,500.00
8	\$112,500.00
9	\$112,500.00
10	\$112,500.00
11	\$125,000.00
12	\$125,000.00
13	\$125,000.00
14	\$125,000.00
15	\$125,000.00
16	\$137,500.00
17	\$137,500.00
18	\$137,500.00
19	\$137,500.00
20	\$137,500.00

EXHIBIT D  
Cost Benefit Analysis