



MEMORANDUM

TO: Members of the Authority

FROM: Timothy Sullivan
Chief Executive Officer

DATE: January 18, 2023

RE: Agenda for Special Board Meeting of the Authority January 18, 2023

Notice of Public Meeting

Roll Call

New Jersey Wind Port

Public Comment

Adjournment



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: January 18, 2023

SUBJECT: New Jersey Wind Port – Request to amend the Authority’s Ground lease with PSEG Nuclear LLC

REQUEST

The Members of the Board are asked to approve an amendment to the Authority’s existing Ground Lease dated September 14, 2021 covering approximately half the area being used to develop the Wind Port, (the “PSEG Lease”) with PSEG Nuclear LLC (“PSEG”). The amendment removes restrictions on PSEG’s ability to terminate the PSEG Lease while the Authority has Wind Port bonds outstanding and, in-turn, removes the Authority’s obligation to establish and maintain a rent reserve account. These provisions are no longer necessary due to the Authority’s purchase of Parcel B and incorporation of that Authority-owned parcel in the lease/lease-back Wind Port bond transaction.

SUMMARY

As approved by the Members on December 21, 2022, the Authority is issuing appropriation-backed bonds to cover a portion of the Wind Port’s Phase 1 and 2 development costs, with an initial issuance of not to exceed \$160 million targeted for late January this year. Bond issuances are underpinned by a lease and sublease (lease/leaseback) between the Authority and the State (Department of Treasury), a financing method that the Authority has employed successfully for past projects such as the Division of Taxation and Department of Health buildings. Under the lease/leaseback structure, the Authority is leasing its property interest at the Wind Port, comprising both the property it is leasing under the PSEG Lease (Parcels A, C, D, E, and G) and property that it owns outright (Parcel B)¹ to the State in exchange for the State paying rent in an amount sufficient to pay the Authority’s debt service on the Wind Port bonds and the rent obligation under the PSEG Lease.

¹ As approved by the Members at the July 2022 meeting, the Authority purchased the approximately 109-acre Parcel B from PSEG in July 2022 for \$24.25 million.

At the time of the PSEG Lease's execution in September 2021, the Authority did not own Parcel B and the lease/leaseback structure anticipated including only Authority leased property. Accordingly, the Authority determined, in consultation with counsel and business advisors, that termination of the PSEG Lease would cause the termination of a future lease and sublease between the Authority and the State due to the Authority no longer having a property interest to lease to the State – a risk that would effectively preclude the sale of the Wind Port bonds. To address this, staff negotiated the inclusion of provisions in the PSEG Lease that limit PSEG's ability to terminate while any bonds remain outstanding. In exchange, the Authority agreed to establish and replenish as needed a rent reserve, to which PSEG would be granted access via an account control agreement, sized at up to seven years of rent (approximately \$25-30 million based on the total of base rent and additional rent).² Since that time, the Authority purchased Parcel B, which is of comparable size to the property leased through the PSEG Lease. As a result, the lease and sublease with the State encompasses both Authority leased and owned property. Accordingly, the Authority determined, in consultation with counsel, that termination of the PSEG Lease would not terminate the lease/leaseback structure because the lease and sublease also includes the Authority-owned property. The Authority-owned property would continue to be owned by the Authority and leased to the State even if the PSEG Lease terminates, thereby preserving the State's rent payment (which in turn, preserves the bond debt service).

Given there is no longer a need to prohibit termination of the PSEG Lease in order to issue the Wind Port bonds under a lease/leaseback structure, Authority staff recommends amending the PSEG Lease to remove the termination restrictions and, by extension, the requirement for the Authority to establish and maintain a rent reserve account. This change is unlikely to impact the bond rating or interest rate – which will be confirmed -- meaning there is an expected net saving to the State from not having to allocate significant capital to the reserve account and incur interest on that amount. This will also allow funds that would otherwise have been used to capitalize the rent reserve account to be allocated to the Wind Port, lessening the amount of subsequent bond issuances and/or funding appropriations.

The amendment is attached at Exhibit A. The amendment is substantially final form; PSEG has reviewed and approved it.

² Per the PSEG Lease approved by the Board in August 2021, the rent reserve was to be capitalized at either one times that year's rent (known as the partial rent reserve) or seven times (known as the full rent reserve). The Authority could avail itself of the partial rent reserve option if the State included in the lease with the Authority the obligation to cover the PSEG Lease rent obligation – with PSEG having discretion to decide whether to accept the State obligation. At this time, PSEG advised that it will require the rent reserve to be seven times the rent. The sizing is stated as a range due to the fact that additional rent for the next lease year has still to be agreed by Authority staff and PSEG.

RECOMMENDATION

The Members are asked to approve the attached amendment to the PSEG Lease to remove restrictions on PSEG's ability to terminate the PSEG Lease while the Authority has Wind Port bonds outstanding and, in-turn, remove the Authority's obligation to establish and maintain a rent reserve account.

A handwritten signature in blue ink, appearing to read 'T. Sullivan', is positioned above a horizontal line.

Tim Sullivan, CEO

Prepared By: Jonathan Kennedy

Attachment
Exhibit A – PSEG Ground Lease Amendment

Exhibit A – Amendment to the PSEG Lease

FIRST AMENDMENT OF GROUND LEASE

THIS FIRST AMENDMENT OF GROUND LEASE (“First Amendment”) is made and entered into this ___ day of _____, 2023, by and among **PSEG NUCLEAR LLC**, as landlord, a Delaware limited liability company, having its principal office at 80 Park Plaza, Newark, New Jersey 07102 (together with its permitted successors and assigns, “**Landlord**”), and **THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**, as tenant, a body corporate and politic organized and existing under the laws of the State of New Jersey having its principal offices located at 36 West State Street, P.O. Box 990, Trenton, New Jersey 08625 (the “**NJEDA**” and together with its permitted successors and assigns, “**Tenant**” and together with Landlord, the “**Parties**”).

WITNESSETH:

WHEREAS, Landlord, NJEDA and PSEG Nuclear LLC, in its own capacity, entered into a Ground Lease Agreement dated as of September 14, 2021 (the “**Lease**”), pursuant to which Landlord agreed to demise and lease the Parcels to Tenant, and Tenant agreed to take and rent from Landlord the Parcels for the Term, subject to the terms of the Lease for the purposes of developing the New Jersey Wind Port; and

WHEREAS, Tenant and Landlord agreed, as part of the Lease, that, should Tenant pursue project funds through bond issuances, Tenant would fund a Reserve Account as a security on or before the date of closing of any such bonds; and

WHEREAS, in exchange for the funding of the Reserve Account, as well as replenishing the Reserve Account if Landlord withdraws any amount pursuant to a Tenant Event of Default, Landlord agreed not to take any action that would constitute a termination or otherwise exercise its right to terminate the Lease while any bonds remain outstanding; and

WHEREAS, the Parties desire to amend the Lease to eliminate the restriction on Landlord’s termination rights while Tenant’s bonds remain outstanding, which also eliminates the need for the Reserve Account as security.

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree to the following:

1. **Recitals.** The recitals set forth above are incorporated herein by this reference with the same force and effect as if fully set forth hereinafter.

2. **Capitalized Terms.** Capitalized terms not otherwise defined herein shall have the respective meaning ascribed to them in the Lease.

3. **Amendments.**

a. Section 27.8 of the Lease is hereby deleted in its entirety.

b. Section 27.9 of the Lease is hereby deleted in its entirety.

c. The following defined terms are hereby deleted from the Lease:

- i. "Account Bank"
- ii. "Account Control Agreement"
- iii. "Bonds"
- iv. "Full Reserve Amount"
- v. "Partial Reserve Amount"
- vi. "Reserve Account"
- vii. "Reserve Amount"
- viii. "State Rent Obligation"

d. All other references in the Lease to Section 27.8 and Section 27.9 shall be null and without effect.

4. PSEG Nuclear State of Incorporation. In order to correct a scrivener's error, the Lease is amended to reflect that PSEG Nuclear LLC is "a Delaware limited liability company", which hereby replaces all references that PSEG Nuclear LLC is "a New Jersey limited liability company".

5. Lease Date. In order to correct a scrivener's error, (a) page 1 of the Preamble of the Lease is hereby amended by adding "2021," after "September," in the first paragraph thereof and (b) page 121 of the Lease (the signature page) is hereby amended by deleting "2020" and substituting "2021" therefor.

6. Other Provisions. This First Amendment and the obligations of the Parties under this First Amendment shall be interpreted, construed and enforced in accordance with the laws of the State of New Jersey.

7. Reaffirmation of Terms. Except as expressly modified hereby, all of the terms, covenants and provisions of the Lease are hereby confirmed and ratified and shall remain unchanged and in full force and effect.

8. Counterpart Copies. This First Amendment may be executed in counterparts, each of which when so executed shall be an original, and all of such counterparts shall together constitute but one and the same instrument.

9. Authority to Sign. The signatories hereto represent that they are authorized to enter into this First Amendment on behalf of the party for which they sign.

**(REMAINDER INTENTIONALLY BLANK)
(SIGNATURES CONTAINED ON THE FOLLOWING PAGES)**

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the _____ day
of _____, 2023.

LANDLORD:

**PSEG NUCLEAR LLC, a Delaware limited liability
company**

BY: _____

NAME:

TITLE:

TENANT:

**NEW JERSEY ECONOMIC DEVELOPMENT
AUTHORITY, a body corporate and politic organized
and existing under the laws of the State of New Jersey**

BY: _____

NAME:

TITLE: