

Presentment Date: January, 6, 2020 at 12:00 p.m. (ET)
Objection Deadline: January 6, 2020 at 11:30 a.m. (ET)

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Counsel for the Reorganized Debtors

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

)				
In re:)				Chapter 11
)				
EMPIRE GENERATING CO, LLC, <i>et al.</i> , ¹)				Case No. 19-23007 (RDD)
)				
Reorganized Debtors.)				(Jointly Administered)
)				

**NOTICE OF PRESENTMENT OF STIPULATION
RESOLVING PROOF OF CLAIM NUMBER 39 FILED BY
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

PLEASE TAKE NOTICE that the annexed *Stipulation Resolving Proof of Claim Number 39 Filed By New York State Department of Environmental Conservation* (the “Stipulation”) will be presented for signature by the Honorable Robert D. Drain, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) on **January 6, 2020 at 12:00 p.m. (prevailing Eastern Time)** (the “Presentment Date”);

¹ The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Reorganized Debtor’s tax identification number, if applicable, are: Empire Generating Co, LLC [3821], Empire Gen Holdco, LLC [3820], Empire Gen Holdings, LLC [4849], and TTK Empire Power, LLC [none].

PLEASE TAKE FURTHER NOTICE that responses or objections (each, a “Response”), if any, to the Stipulation must (i) be in writing, (ii) conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Bankruptcy Court, and (iii) be filed and served in accordance with the *Final Order Establishing Notice and Service Procedures* [Docket No. 157] entered on June 21, 2019 (with a hard copy delivered directly to Chambers of the Honorable Robert D. Drain, United States Bankruptcy Court for the Southern District of New York, located at 300 Quarropas Street, White Plains, New York 10601) on counsel for the Reorganized Debtors, Hunton Andrews Kurth LLP, Attn: Peter S. Partee, Sr. and Robert A. Rich, 200 Park Avenue, New York, New York 10166 (ppartee@huntonak.com, rrich2@huntonak.com), so as to be actually received by **January 6, 2020 at 11:30 a.m. (prevailing Eastern Time)** (the “Objection Deadline”);

PLEASE TAKE FURTHER NOTICE that if no Responses are timely filed and served, the Reorganized Debtors shall, on or after the Presentment Date, submit the Stipulation to the Bankruptcy Court, which the Bankruptcy Court may so-order without further notice or opportunity to be heard; and

PLEASE TAKE FURTHER NOTICE that a copy of the Stipulation or any other pleading filed in the above-captioned cases may be obtained free of charge by accessing the website of the Debtors’ claims and noticing agent, Omni Management Group, Inc., at <https://omnimgt.com/EmpireGeneratingCo>, or at the Bankruptcy Court’s website at www.nysb.uscourts.gov through an account obtained from the Pacer Service Center at 1-800-676-6856 in accordance with the procedures and fees set forth therein.

Dated: December 23, 2019
New York, New York

/s/ Robert A. Rich
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Counsel for the Reorganized Debtors

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
EMPIRE GENERATING CO, LLC, <i>et al.</i> , ¹)	Case No. 19-23007 (RDD)
Reorganized Debtors.)	(Jointly Administered)

**STIPULATION RESOLVING PROOF OF CLAIM NUMBER 39 FILED BY
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

This stipulation (the “Stipulation”) is entered as of December 23, 2019 by and between Reorganized Empire Generating Co, LLC (“Empire Generating”) and the New York State Department of Environmental Conservation (“DEC”; together with Empire Generating, the “Parties”).

RECITALS

A. Empire Generating owns and operates a combined cycle dual-fuel power plant (the “Plant”) located in Rensselaer, New York. Empire Generating represents that it leases

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approximately thirty-five (35) acres of land from BASF Corporation on which the Plant is located (the “BASF – South 40 Site”).

B. DEC is the regulatory agency for environmental issues in New York State.

C. DEC has required that Empire Generating analyze and report on the presence of 1,4 dioxane and twenty-one per- and polyfluoroalkyl substances (collectively, “PFAS”) in groundwater below the BASF – South 40 Site.

D. Empire Generating is in the process of collecting and analyzing samples for the presence of PFAS for submission to DEC. Samples Empire Generating has collected and analyzed, and thereafter submitted to DEC, show the presence of PFAS, including perfluorooctanoic acid (“PFOA”), in groundwater below the BASF – South 40 Site.

E. On May 19, 2019 (the “Petition Date”), Empire Generating and certain of its affiliates (collectively with Empire Generating, the “Debtors”) filed voluntary petitions for relief under chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York (the “Court”) commencing the above-captioned cases (the “Chapter 11 Cases”).

F. On September 23, 2019, the Court entered an order [Dkt. No. 304] (the “Confirmation Order”) confirming the *Debtors’ Modified Amended Joint Chapter 11 Plan* dated September 11, 2019 [Dkt. No. 304-1] (as amended, modified or supplemented from time to time, the “Plan”).²

G. The Effective Date of the Plan occurred on November 4, 2019.

H. On May 31, 2019, the Court entered an order [Dkt. No. 72] establishing deadlines for creditors to file proofs of claim in the Chapter 11 Cases.

² Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Plan.

I. On November 13, 2019, DEC filed a proof of claim in the Chapter 11 Case of Empire Generating, designated by the court-appointed claims agent as Claim No. 39 (the “Proof of Claim”), through which DEC asserts a general unsecured claim in the amount of \$3,534,788.00, which DEC estimates would be the clean-up cost for PFOA contamination of groundwater at the BASF – South 40 Site subject to change based on further investigation and analysis.

J. On December 4, 2019, Empire Generating filed an objection to DEC’s claim [Dkt. No. 397].

K. Empire Generating denies any remediation obligations with respect to the alleged PFOA contamination.

L. Pursuant to section 7.2 of the Plan, the Reorganized Debtors are authorized to settle or compromise the Proof of Claim without any further notice to or action, order, or approval by the Court.

M. The Parties agree that the effect of this agreement will allow the investigation of contamination at the BASF – South 40 Site to proceed as it ordinarily would in the absence of this bankruptcy proceeding.

N. The Parties desire to reserve their rights with respect to any PFAS remediation obligations and to resolve the Proof of Claim subject to the terms and conditions set forth herein.

STIPULATION

NOW, THEREFORE, in consideration of the facts and events described in the above recitals and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereby agree as follows:

1. Nothing in the Plan or Confirmation Order shall discharge, impair, affect or otherwise preclude DEC from (i) assessing any PFAS investigation and/or remediation obligations on the part of Empire Generating, its assignees, agents and/or successors or (ii) recovering

damages for any failure on the part of Empire Generating to satisfy any such obligations to the extent permitted by applicable law.

2. Except as expressly set forth in paragraph 1, nothing in this Stipulation shall be deemed to be a waiver of any defenses available to Empire Generating.

3. Subject to the terms herein, the Proof of Claim is deemed withdrawn upon execution of this Stipulation by each of the Parties.

4. Each of the Parties has had a full opportunity to participate in the drafting of this Stipulation and, accordingly, any claimed ambiguity shall be construed neither for nor against any of the Parties.

5. Each of the Parties agrees to bear its own costs and expenses to the extent permitted by law, including Empire Generating and the New York State Office of the Attorney General's attorneys' fees incurred in preparing and negotiating this Stipulation.

6. Each person who executes this Stipulation on behalf of a Party represents that he or she is duly authorized to execute this Stipulation on behalf of such Party.

7. The provisions contained in this Stipulation constitute the entire agreement among the Parties with regard to the subject matter of this Stipulation, and all prior understandings or agreements, if any, are merged into this Stipulation.

8. This Stipulation may not be modified, amended, or vacated other than by a signed writing executed by the Parties.

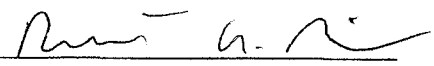
9. Except to the extent the Bankruptcy Code or Bankruptcy Rules apply, this Stipulation shall be construed and interpreted in accordance with the laws of the State of New York without regard to the choice of law principles of the State of New York which could otherwise require the application of the law of another jurisdiction.

10. The Stipulation shall inure to the benefit of and shall be binding on the Parties and their respective successors and assigns.

11. This Stipulation may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Stipulation delivered by e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Stipulation.


IN WITNESS WHEREOF, the Parties have caused this Stipulation to be executed as of the date listed above.

EMPIRE GENERATING CO, LLC

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NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By: 
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Counsel for New York State Department of Environmental Conservation

Dated: _____, __, 2019
White Plains, New York

SO ORDERED.

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE