

RESOLUTION NO. R 027 10

**A PROJECT RESOLUTION AUTHORIZING ISSUANCE OF UP TO
\$75,000,000 RECOVERY ZONE FACILITY BONDS
(INDIAN RIVER POWER LLC PROJECT)
SERIES 2010**

WHEREAS, the County Council (the "Council") of Sussex County, Delaware (the "County") has heretofore adopted the Sussex County Commercial, Industrial and Agricultural Revenue Bond Ordinance (Ordinance No. 80 enacted November 10, 1981), as amended, including by Ordinance No. 113 enacted March 8, 1983 (collectively, the "General Ordinance"), pursuant to the authority of Title 9, Chapter 70, of the Delaware Code to encourage and assist the financing of the construction, acquisition, sale or lease of industrial, commercial and agricultural facilities related to the maintenance or promotion of employment or to the redevelopment or revitalization of areas within the County; and

WHEREAS, Indian River Power LLC, a limited liability company organized and existing under the laws of the State of Delaware (the "Applicant"), has submitted to the County an application (the "Application") requesting the issuance of up to \$75,000,000 of its Recovery Zone Facility Bonds (the "Bonds") for the financing of a project in order to assist in (A) the acquisition, construction, installation, improvement and completion by the Applicant of its Indian River Air Quality Improvement Project which includes air quality control systems for the reduction of sulfur dioxide, nitrogen oxides and mercury emissions at the Indian River Generating Station, (B) to pay capitalized interest with respect to the Bonds; (C) to fund any necessary reserve funds; and (D) to pay certain costs of issuance of the Bonds, including any credit enhancement fees (collectively, the "Project"); and

WHEREAS, Treasury Regulations § 1.150-2 (the "Reimbursement Regulation") sets forth the rules for determining when proceeds of the Bonds are deemed spent for purposes of applying Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended (the "Code"), including the arbitrage yield restrictions and rebate requirements under Section 148 of the Code, if the proceeds of the Bonds are used to reimburse expenditures made prior to the date of issue of the Bonds; and

WHEREAS, the Reimbursement Regulation requires that a declaration of official intent to reimburse the expenditures from proceeds of the Bonds be made not later than sixty (60) days after payment of certain original expenditures, and that an allocation in writing evidencing use of proceeds of a reimbursement bond to reimburse an original expenditure be made not later than eighteen (18) months after the later of the date the original expenditure is paid or the date the project is placed in service or abandoned, but in no event later than three (3) years after the original expenditure is paid and provided further that these limitations shall not apply to qualified "preliminary expenditures" as permitted by Treasury Regulations § 1.150-2(f); and

WHEREAS, as required by the General Ordinance, the Application and the proposed issuance of the Bonds were reviewed by a committee comprised of the County Administrator, Director of Finance, County Attorney and Director of Economic Development (the "Review Committee") on November 15, 2010; and

WHEREAS, the Review Committee has made findings and determinations required by the General Ordinance; and held a properly noticed public hearing with respect to the Bonds (the "TEFRA Hearing");

WHEREAS, the Council desires to (i) take such action and declare its official intent to comply with the Reimbursement Regulation to pay the costs of the Project, including the reimbursement of certain original expenditures made for the Project and (ii) authorize the issuance, execution and delivery of the Bonds and the execution and delivery of the other documents required to accomplish the foregoing and to authorize all other necessary action in connection with the Project and the financing thereof; and

WHEREAS, Applicant has agreed to pay all costs of the County including fees of its bond counsel in connection with the issuance of the Bonds whether they are issued or not,

NOW, THEREFORE, BE IT RESOLVED:

Section 1. Definitions. The terms used in this Project Resolution shall have the meanings specified herein or in the preamble hereto or, if not otherwise defined herein, as specified in the General Ordinance, unless a different meaning is clearly indicated by the context.

Notwithstanding any other provisions to the contrary, "Costs" means with respect to the Project all costs, whether capital or otherwise, and includes, without limitation, the cost of acquisition, construction, reconstruction, repair, alteration, improvement and extension of any building, structure, facility or other improvement; the cost of machinery and equipment; the cost of acquisition, construction, reconstruction, repair) alteration, improvement and extension of pollution control devices, equipment or facilities; the cost of lands, rights-in-lands, easements, privileges, agreements, franchises, utility extensions, disposal facilities, access roads and site development necessary or useful and convenient for the Project or in connection therewith, financing costs including, but not limited to, discount on bonds, costs of issuance of bonds, engineering and inspection costs, trustee or fiscal agents fee, cost of financial, legal, professional and other estimates and advice, organization, administrative, insurance, and other expenses of the County or the Applicant prior to and during any acquisition or construction; and all such other expenses as may be necessary or incidental to the financing, acquisition, construction or completion of the Project or part thereof, including, but not limited to, capitalized interest and such provisions for reserves for payment of principal of or interest on the Bond during or after such financing, acquisition or construction as may be provided for herein, but shall not include raw materials, work in progress, working capital, or stock in trade.

Section 2. Approval of Project; Legislative Findings

The Council hereby approves the findings and determinations made by the Review Committee with respect to the Project and, in conjunction therewith, it is hereby determined and declared as a matter of legislative finding that:

(a) the Project is eligible for financial assistance and the financing thereof will accomplish the public purposes contemplated by the General Ordinance; and

(b) the Project will (i) tend to maintain or provide gainful employment opportunities within and for the people of the County; (ii) aid, assist and encourage the economic development or redevelopment of the County; and (iii) maintain, diversify or expand employment promoting enterprises within the County; and

(c) the issuance and sale of the Bonds by the County will enable the Applicant to obtain efficient and cost-effective financing thereby enhancing the Applicant's ability to accomplish the aforesaid public purpose in the County; and

(d) the Bonds will be limited obligations of the County and the County does not pledge its general credit or taxing power therefor, but such Bonds shall be payable solely from Revenues as specified in Section 7 of the General Ordinance; and

(e) the Project is within the recovery zone of the County.

Based upon the foregoing findings and determinations and as a substantial inducement to the Applicant to locate, remain or expand within the County, the Project is hereby approved and determined to be eligible for financing by the County as provided herein

Section 3. Authorization. This Project Resolution is adopted pursuant to the General Ordinance.

Section 4. Interpretation. All references in this Project Resolution to articles, sections and other subdivisions of this Project Resolution are to the designated articles, sections or other subdivisions of this Project Resolution as originally adopted. The words "herein", "hereof", "hereby", and "hereunder" and other words of similar import refer to this Project Resolution as a whole and not to any particular article, section or other subdivision. The use of words in the singular number includes the plural and the use of the plural includes the singular number.

Section 5. Descriptive Headings. The descriptive headings of the sections of this Project Resolution are inserted for convenience only and shall not control or affect the meaning or construction of any of its provisions.

Section 6. Severability. In case any one or more of the provisions contained in this Project Resolution or in the Bonds or any other document executed and delivered pursuant hereto shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Project Resolution, the Bonds or other documents, and this Project Resolution, the Bonds or other documents shall be construed and enforced as if such invalid, illegal or unenforceable provisions had never been contained herein or therein.

Section 7. Declaration of Official Intent and Recovery Zone Facility Bond Allocation. The County declares its official intent within the meaning of Treasury Regulations § 1.150-2 to issue up to \$75,000,000 aggregate principal amount of its Bonds, in one or more series, to finance the Project and to reimburse certain original expenditures made for the Project and for other capital expenditures related thereto, which have been or will be incurred prior to the issuance of the Bonds. The County hereby allocates all of the recovery zone volume cap currently available to the County (\$44,967,000) to this Project. The final par amount of the Bonds issued shall be determined by the amount of any additional recovery zone facility bond volume cap that may become available to be used by the County for this Project. Such amount shall be determined by the County Administrator after consultation with the County's Bond Counsel.

Section 8. Authorization and Terms of the Bonds. In order to provide funds to pay a portion of Costs of the Project, the County shall issue the Bonds, which shall be entitled the "Sussex County, Delaware, Recovery Zone Facility Bonds (Indian River Power LLC Project), Series 2010" and shall be issued in an aggregate principal amount not to exceed \$75,000,000 or such other amount permitted to be issued as determined by County's Bond Counsel. The Bonds shall be dated the date of delivery and shall mature on the dates and in the amounts as set forth in the bond issuing documents, and shall be subject to redemption provisions as set forth therein. In addition:

(a) The Bonds shall be special, limited obligations of the County payable solely and exclusively from and secured by payments made by the Applicant out of the Revenues pledged with respect to the Project as specified in Section 7 of the General Ordinance. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE COUNTY, THE STATE OF DELAWARE OR ANY POLITICAL SUBDIVISION THEREOF SHALL BE PLEDGED THEREFOR. The Bonds shall not be a debt or liability of the County, the State of Delaware or of any other political subdivision thereof.

(b) The Bonds are expected to be issued pursuant to a Trust Indenture between the County and a trustee (the "Indenture"), sold pursuant to the terms of an Underwriting Agreement (the "Agreement") by and among the County, the Applicant and an underwriter (the "Underwriter") and the proceeds thereof will be applied to make a loan to the Applicant pursuant to a Loan Agreement by and between the County and the Applicant (the "Loan Agreement"). The Bonds may be issued as variable rate or fixed rate. The title of the Bonds may be changed to reflect the interest rate selected.

(c) The Bonds and the other documents related thereto shall be approved by the County Administrator as he may deem appropriate to carry out the intent of this Project Resolution, and shall be executed on behalf of the County by the manual or facsimile signature of the County Administrator, with the manual or facsimile seal of the County imprinted thereon, attested by the manual or facsimile signature of the County Clerk.

(d) The Bonds shall not be payable out of any funds, revenues or properties of the County other than those specifically assigned or pledged therefor.

(e) The Bonds shall mature no later than 35 years from the date of issuance.

Section 9. Authorization of Bond Documents. The proceeds of the Bonds shall be applied to make a loan to the Applicant pursuant to the Loan Agreement, in order to finance the Project. The County may enter into the Indenture with a corporate trustee acceptable to the County and the Applicant (the "Trustee") providing for the issuance of and security for the Bonds, the application of the proceeds of the Bonds, the assignment to the Trustee of certain rights of the County and any other financing documents as the Underwriter may require and the application of the payments to be made by the Applicant for the repayment of the Bonds. The County may also enter into any bond purchase agreement or bond placement agreement as the case may be with an underwriter and the Applicant to provide for the sale of or placement of the Bonds to or by the underwriter at a negotiated sale at such price plus accrued interest, if any, and on such other terms as may be mutually agreed upon by all such parties.

Section 10. Approval, Execution and Delivery of Documents. The County shall enter into the bond issuing documents described above and such other documents as the County Administrator determines to be reasonable and appropriate to complete the financing for the Project as authorized by this Project Resolution. The County Administrator is hereby authorized to execute and deliver in the name of the County and on its behalf the bond documents and to approve the final form and substance thereof. The County Administrator is also authorized to approve any required offering memorandums, official statements or placement memorandums required to sell the Bonds. The County Clerk is hereby authorized to affix the seal of the County and to attest to the same, if required, on the Bonds and the foregoing documents which the County Administrator is authorized to execute and deliver. Copies of the documents so executed, sealed, attested and delivered shall be filed in the official record of the County.

Section 11. Binding Effect of Covenants and Agreements. All covenants, obligations and agreements of the County set forth in this Project Resolution and in the documents authorized hereby shall be deemed to be the covenants, obligations and agreements of the County to the full extent authorized or permitted by law and all such covenants, obligations and agreements shall be binding upon the County and its successors. No covenant, obligation or agreement herein contained or in the documents authorized hereby shall be deemed to be a covenant, obligation or agreement of any member, officer, agent or employee of the County in his or her individual capacity and neither the members of the Council nor any officer executing the or other documents authorized by this Project Resolution shall be liable personally thereunder or be subject to any personal liability or accountability by reason of the execution and delivery thereof.

Section 12. Further Action. The proper officers of the County are hereby authorized and directed to execute such further documents and do such further things as may be necessary to carry out the issuance of the Bonds or the intent and purpose of this Project Resolution or any document herein authorized.

Section 13. Effective Date. This Resolution shall become effective upon its passage by Council.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF RESOLUTION NO. R 027 10 PASSED BY THE COUNTY COUNCIL OF SUSSEX COUNTY ON THE 30TH DAY OF NOVEMBER 2010.


ROBIN A. GRIFFITH
CLERK OF THE COUNTY COUNCIL

SYNOPSIS: This Project Resolution expresses the County's intent to issue recovery zone facility bonds (the "Bonds") in an amount not greater than \$75,000,000 for the financing of a project by Indian River Power LLC, a limited liability company organized and existing under the laws of the State of Delaware (the "Applicant") in order to assist in (A) the acquisition, construction, installation, improvement and completion by the Applicant of its Indian River Air Quality Improvement Project which includes air quality control systems for the reduction of sulfur dioxide, nitrogen oxides and mercury emissions at the Indian River Generating Station, (B) to pay capitalized interest with respect to the Bonds; (C) to fund any necessary reserve funds; and (D) to pay certain costs of issuance of the Bonds, including any credit enhancement fees (collectively, the "Project"). This Project Resolution authorizes the execution and delivery of the Indenture, Loan Agreement, Underwriting Agreement and Bonds and any other necessary documents by the County Administrator. The Bonds will be limited obligations of the County payable solely from Revenues received from the Applicant and NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE COUNTY, THE STATE OF DELAWARE OR ANY POLITICAL SUBDIVISION THEREOF SHALL BE PLEDGED THEREFOR.