**TOWN OF MONTGOMERY INDUSTRIAL DEVELOPMENT AGENCY (the “Agency”)**

**NOTICE OF DEVIATION**

**FROM UNIFORM TAX EXEMPTION POLICY**

**PURSUANT TO GENERAL MUNICIPAL LAW § 874(4)(b)**

This Notice of Deviation is being provided to the Town of Montgomery, the County of Orange, and the Valley Central School District for purposes of complying with Section 874 of the General Municipal Law of the State of New York, which requires the Agency to provide written notice prior to taking final action with respect to a proposed payment in lieu of tax agreement if said agreement deviates from the provisions of the Agency’s Uniform Tax Exemption Policy (the “UTEP”).

# Description of the Project

# KCE NY 2, LLC, a New York limited liability company (the “Company”), has submitted an application (the “Application”) to the Agency requesting that the Agency consider undertaking a project (the “Project”) for the benefit of the Company, said Project consisting of the following: (i) the acquisition of an interest in an approximately 8.03 acre parcel of land located at 364 Browns Road in the Town of Montgomery, Orange County, New York (tax map number 26-1-57.221) (the “Land”), (ii) the construction on the Land of a 169-megawatt (MW) battery energy storage facility comprised of battery energy containers, inverter and transform containers and a project substation (the “Facility”), and (iii) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other personal property (collectively, the “Equipment”), all of the foregoing to constitute a battery storage facility (the Land, the Facility and the Equipment being collectively referred to as the “Project Facility”).

# Location of the Project

The Project will be located at 364 Browns Road in the Town of Montgomery, Orange County, New York (tax map number 26-1-57.221) (the “Land”),

# Project Owner/Operator

The Project Operator is KCE NY 2, LLC**,** a New York limited liability company (the “Company”). The owners of the Land are John H. Olsen, Jr. and Marybeth Olsen, with whom the Company has executed an option to lease agreement.

# Proposed Financial Assistance from the Agency

The Company is seeking certain financial assistance with respect to the foregoing including (i) exemptions from all State and local sales and use taxes with respect to qualifying personal property included in or incorporated into the Facility or used in the acquisition, construction or equipping of the Facility, in an amount up to $11,430,551.93; (ii) mortgage recording tax exemption on one or more mortgages in the aggregate amount not to exceed $1,266,153.44 and (C) a fifteen (15) year partial abatement of real property taxes pursuant to a customized, non-standard payment in lieu of tax agreement as described below, the annual payments under which will be calculated with reference to the per megawatt (MW) installed capacity of the Project.

# Deviation From Uniform Tax Exemption Policy

The proposed financial assistance for the Project constitutes a deviation from the Agency’s UTEP because the proposed payment in lieu of tax arrangement deviates from the Agency’s standard payment in lieu of tax schedule. The Agency’s standard payment in lieu of tax schedule provides for payments based on the assessed value of the property, with payments attributable to the value added by new improvements calculated based on percentages of the increase in assessment attributable to such improvements. The UTEP includes provisions for assistance to solar, eligible wind and small energy projects but does not address energy storage projects of the type and size proposed by the Company. The Company has requested that the Agency treat the Project similar to a small energy project, which would be eligible for a fifteen (15) year PILOT commensurate with New York State’s RPTL 487 tax exemption with fixed PILOT Payments determined by the Agency in its sole discretion. The UTEP provides that in determining the PILOT Agreement for such projects, the Agency, may consider the total amount of power generated, stored, or transmitted by such project and the assessed value of such project.

The Agency and the Company propose to enter into an Agreement for Payment in Lieu of Real Estate Taxes (“PILOT Agreement”) which will provide for payment by the Company of an annual payment in lieu of tax of $1,000.00 per megawatt (MW) installed capacity, subject to an annual increase of 2%. It is anticipated that the Project will have a MW installed capacity of 169 MWs. The PILOT Agreement will have a term of fifteen (15) years. Payments in lieu of taxes will be allocated among the affected taxing jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each affected taxing jurisdiction had the Project not been tax exempt due to the status of the Agency. The PILOT Agreement will not provide any abatement for any special assessments levied on the Project.

The UTEP permits the Agency to deviate from the UTEP in special circumstances. In determining whether special circumstances exist to justify such a deviation, the UTEP provides that the Agency may consider the magnitude of the deviation sought and factors which may make the project unusual. In support of the proposed deviation, the Agency will consider the following factors and reasons prior to approving the proposed deviation from the UTEP:

1. The magnitude and/or importance of any permanent private sector job creation and/or retention related to the proposed project in question.

*The Project is a battery energy storage facility. The Company has estimated that twenty-five (25) will be created during the one-year construction time period but is unable to identify any permanent full-time or part-time jobs associated with the operation and maintenance of the Project Facility given the unique nature of the Project. The Applicant intends to operate and maintain the Project through a combination of in-house staff and 3rd party contractors. The Applicant’s staff will monitor and operate the battery on a day-to-day basis, including bidding and scheduling power into the NYISO electricity market and performing general system maintenance. The Applicant will contract for specialty maintenance activities, such as high voltage maintenance needed within the project substation or with the gen-tie line. During operations, the Applicant will also contract for vegetation management, lawncare and snow removal.*

1. The impact of such project on existing and proposed businesses and/or economic development projects.

*The Project will help the local utility company to provide reliable electricity to electric customers (residential and commercial). The impact of the Project is a positive one for the community. Energy storage is a critical component of New York’s transition to cleaner energy The Project will assist the State of New York in meeting its goal of 70% renewable energy by 2030.*

1. The amount of private sector investment generated or likely to be generated by such project.

*The amount of the Company’s investment is estimated to be approximately $141,531,801.25. In addition, the Company has proposed a Host Community Agreement under which it will provide an annual host community payment to the Town of Montgomery coterminous with the PILOT in a total amount of $1,461,293.73.*

1. The demonstrated public support for such project.

*TBD*

1. The estimated value of the Tax Exemptions requested.

*The estimated value of the sales and use tax exemptions for the Project is an amount up to $11,430,551.93, and the estimated value of the mortgage recording tax exemption is an amount up to $1,266,153.44. As there is no assessment model in place for battery storage facilities (unlike wind and solar projects that have a State model), it is difficult to quantify at this time the estimated value of the real property tax exemption being requested. The Company has indicated the Project will result in a net sum of zero in real property tax exemptions because the Project’s “fixtures” that would be subject to real property taxes are limited. The proposed PILOT schedule indicates there will be an overpayment of approximately $7,225.80 at the end of the fifteen-year term.*

1. The extent to which such project will provide needed services and/or revenues to the Affected Tax Jurisdictions.

*The Project will provide revenue in the form of PILOT payments proposed to be paid to the affected taxing jurisdictions during the life of the PILOT Agreement and real property taxes at the expiration thereof. The Company has also proposed a Host Community Agreement under which it will provide an annual host community payment to the Town of Montgomery coterminous with the PILOT in a total amount of $1,461,293.73.*

*Additionally, as noted above, the Project will help the local utility company to provide reliable electricity to electric customers (residential and commercial). The Company has identified the following additional benefits that will be provided:*

* *Lowering and stabilizing electric rates for Montgomery residents;*
* *Protecting health of Montgomery residents by meeting many of the peaking needs currently serviced by older and higher-emitting fossil plans that may be close to retirement and reducing harmful emissions of nitrogen oxides (NOx), sulfur oxides (Sox), and particulate matter through off-peak charging;*
* *Helping Montgomery achieve local sustainability goals;*
* *Reducing carbon emissions;*
* *Facilitating and optimizing renewable energy usage;*
* *Adding resiliency to the electric grid by adding energy storage that can be available when needed and reducing impact of outages and enabling clean energy resources to meet periods of peak demand; and*
* *Helping New York State achieve Climate Leadership and Community Protection Act (Climate Act) goals.*

In addition to the above, prior to approving the proposed deviation from the UTEP, the Agency will also consider the magnitude of the deviation sought, which the Company has stated is not a significant deviation and can instead be viewed as an interpretation of the meaning of “small energy projects” in the UTEP.