

FOR CONSIDERATION

September 17, 2009

TO: The Directors

FROM: Dennis M. Mullen

SUBJECT: Utica, Dunkirk (Oneida County, Chautauqua County) – ECR International Capital – Empire State Economic Development Fund – General Development Financing (Capital Grant)

REQUEST FOR: Findings and Determinations Pursuant to Sections 16-m and 10 (g) of the Act; Authorization to Adopt the Proposed General Project Plan; Authorization to Make a Grant and to Take Related Actions; Determination of No Significant Effect on the Environment

General Project Plan

I. Project Summary

Borrower/Grantee: ECR International, Inc. (“ECR” or “the Company”)

ESD* Investment: A grant of up to \$1,000,000 to be used for a portion of the cost of the purchase of machinery and equipment.

* The New York State Urban Development Corporation doing business as the Empire State Development Corporation (“ESD” or the “Corporation”)

Project Locations: 2201 Dwyer Avenue, Utica
85 Middle Road, Dunkirk
_____, Rome

NYS Empire Zone
(or equivalent): City of Utica Empire Zone; April 28, 2000; 30.53:1
City of Dunkirk Empire Zone; December 23, 1998; 64.25:1

Proposed Project: Infrastructure improvements and purchase of machinery and equipment for the consolidation of the business.

ESD Incentive Offer Accepted: September 30, 2008

Project Completion: December 31, 2009

Number of Employees at Project Locations:

	<u>Utica</u>	<u>Dunkirk</u>
Initial employment (at time of ESD Incentive Offer):	132	115
Current employment level:	132	115
Minimum employment on January 1, 2012:	186*	170

* 37 jobs will be relocated from the Rome facility.

Grantee Contact: Paul Totaro, Vice President & CFO
2201 Dwyer Avenue
Utica, NY 13504
Phone: (315) 731-4116
Fax: (315) 797-3762

Anticipated
Appropriation
Source: Empire State Economic Development Fund

ESD Project No.: W581

Project Team:	Origination	Jane Thelen
	Project Management	Glendon McLeary
	Affirmative Action	Helen Daniels
	Finance	Jonevan Hornsby
	Environmental	Soo Kang

II. Project Cost and Financing Sources

<u>Financing Uses</u>	<u>Amount</u>
Building Renovation & Expansion	\$2,875,280
Machinery & Equipment	4,580,000
Moving Expenses	356,000
Warehouse Rental	159,815
Design Engineering	225,000
Sales, Marketing and Training	<u>9,697,905</u>

Total Project Costs \$17,894,000

<u>Financing Sources</u>	<u>Amount</u>	<u>Percent</u>	<u>Rate/Term/Lien</u>
ESD-Grant	\$1,000,000	6%	
JDA-Loan (W483)	\$2,000,000	11%	% TBD/5 yrs./co-equal 1 st lien on M&E*

First Niagara	5,000,000	28%	%**/5 yrs/co-equal 1 st lien on M&E
Wells Fargo	8,104,600	45%	___%/___ yrs/ 2nd lien on RE
Company Equity	<u>1,789,400</u>	<u>10%</u>	
Total Project Financing	<u>\$17,894,000</u>	<u>100.0%</u>	

* ECR is considering the JDA Taxable Fixed or Variable Rate.

**Wall Street Journal Prime Rate plus one percent (1.00%) floating, per annum.

III. Project Description

A. Background

In 1928 Earle C. Reed founded The Utica Companies, a cast iron boiler manufacturer and Dunkirk Radiator Corporation, a radiator manufacturer in Utica and Dunkirk, New York respectively. The two manufacturers were merged in 1999 to form ECR and bear the founder's name. ECR designs, manufactures and markets heating, ventilation and air conditioning ("HVAC") equipment including boilers, water heaters, hydronic system controls and furnaces for the North America HVAC market at its plants at Dunkirk and Utica, New York and Wallaceburg, Ontario, Canada. A fourth ECR facility in Rome, New York, is dedicated to the design and manufacture of cooling products for residential, light commercial, institutional, and hospitality markets. ECR's customers include R.E. Michel Co., Inc., Carrier Corporation and Lennox Industries, Inc. Major competitors include Weil McLain, Burnham Holdings, and Peerless.

The HVAC industry is competitive and the recent economic environment has resulted in ECR having to devise a realignment plan to remain competitive within the industry. Two major competitors of ECR have recently restructured their companies by moving their manufacturing operations either south or off-shore.

ECR was faced with similar alternatives. The Company had facilities in Utica, Dunkirk and Rome, New York and Canada and it needed to restructure to keep pace with its competitors. ECR contemplated moving its operations to China where it has several joint ventures. ECR was also pursued by industrial development agencies in Ohio, Pennsylvania, North Carolina, South Carolina and Virginia. The Company also considered a realignment plan to remain in New York State however a significant investment in infrastructure and machinery and equipment was required. To reduce the cost of the project and induce the Company to proceed with the project in New York State, in September 2008, ESD offered an incentive package including a \$1,000,000 capital grant and a \$2,000,000 JDA Machinery and Equipment Loan (the "Loan") to assist with the cost of the acquisition of the machinery and equipment. On October 30, 2008, the Company accepted the offer and will retain 115 jobs in Dunkirk and 132 jobs in Utica. The Company will also create 55 jobs in Dunkirk and created 17 jobs in Utica. Additionally, ECR will relocate 37 jobs from Rome to Utica. Without ESD's assistance, 284 jobs could have been relocated off-shore or to another state and the potential for the creation of 72 new jobs might have been lost to New York State.

ECR is currently reviewing the option of the JDA Taxable Fixed or Variable rate and the Loan is scheduled to be presented to the JDA board for consideration in September or October 2009.

B. The Project

The project involved the closure of ECR's Rome, New York and Ontario, Canada facilities and the relocation of its operations to Utica and Dunkirk, New York. ECR will also consolidate its Climate Energy Joint Venture manufacturing operations to the Dunkirk or Utica plant. This move is a cornerstone to ECR's business plan to commercially launch its new freewatt™ Micro Combined Heat and Power ("MCHP") product line. Project activities included infrastructure improvements to both facilities inclusive of roof repair, concrete flooring, lighting, locker room expansion, heating system, wall installation and insulation, machine shop ventilation, upgrade of loading docks, racking system, blacktop, and tele-communications. ECR has also acquired of three CNC machines, one nipple machine, two turrets and custom built an isometric lab, hydronic, forced air and Q-90 test stations. The project also involved training. As of September 2009, ECR is fully operational at Dunkirk and Utica and it currently has a total of 284 employees at both locations.

The project will enable ECR to consolidate its operations in New York and remain competitive within the HVAC industry. ECR will also commercially launch its new MCHP product line which is one of the most "green" and efficient home energy solutions available. Given rising electricity costs, MCHP has the potential to generate half of a typical home's annual electrical needs, saving homeowners hundreds of dollars on electric bills. Additionally, the electricity generated by MCHP can be sold back to the power grid.

C. Financial Terms and Conditions

1. The Company shall pay a commitment fee of 1% of the \$1,000,000 capital grant (\$10,000) upon execution of the grant disbursement agreement. In addition, at the time of disbursement, the Company will reimburse ESD for all out-of-pocket expenses incurred in connection with the project.
2. The Company will demonstrate no material adverse change in its financial condition prior to disbursement.
3. The Company or the Company's shareholders will contribute at least 10% in equity to the Project. Equity is defined as any non-debt source of capital, and should be auditable through Company financial statements or Company accounts, if so requested by ESD.
4. Prior to disbursement, the Company must employ at least the number of Full-time Permanent Employees set forth as the Baseline Employment in the table below. A Full-time Permanent Employee shall mean (a) a full-time, permanent, private-sector employee on the Grantee's payroll, who has worked at the Project Location for a minimum of thirty-five hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties; or (b) two part-time, permanent, private-sector employees on Grantee's payroll, who have worked at the Project Location for a combined minimum of

thirty-five hours per week for not less than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties.

5. Up to \$1,000,000 will be disbursed to the Grantee in three installments as follows:
 - a) an Initial Disbursement of an amount equal to 60% of the grant (\$600,000) upon documentation of Utica and Dunkirk machinery and equipment project costs totaling \$4,580,000, and documentation of the employment of at least 132 Full-time Permanent Employees at the Utica Project Location and at least 115 Full-time Permanent Employees at the Dunkirk Project Location, assuming that all project approvals have been completed and funds are available;
 - b) a Second Disbursement of an amount equal to 30% of the grant (\$300,000) will be disbursed upon documentation of the employment of at least 169 Full-time Permanent Employees at the Utica Project Location (Employment Increment of 37*) and at least 140 Full-time Permanent Employees at the Dunkirk Project Location (Employment Increment of 25), provided Grantee is otherwise in compliance with program requirements;
 - c) a Third Disbursement of an amount equal to 10% of the grant (\$100,000) will be disbursed upon documentation of the employment of at least 186 Full-time Permanent Employees at the Utica Project Location (Employment Increment of 17) and at least 170 Full-time Permanent Employees at the Dunkirk Project Location (Employment Increment of 30), provided Grantee is otherwise in compliance with program requirements.

** 37 jobs will be relocated from Rome to Utica, New York.*

Payment will be made upon presentation to ESDC of an invoice and such other documentation as ESDC may reasonably require. Expenses must be incurred on or after September 30, 2008 to be considered eligible project costs. All disbursements must be requested by April 1, 2012.

6. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$1,000,000, for this project if ESD determines that the reallocation of the assistance would better serve the needs of the Company and the State of New York. In no event shall the total amount of any assistance to be so reallocated exceed the total amount of assistance approved by the Directors.
7. In consideration for the making of the Grant, Grantee will achieve the Employment Goals set forth in Column B of the table below. If the Full-time Permanent Employee Count for the year prior to the reporting date set forth in Column A of the table below is less than eighty-five percent (85%) of the Employment Goal set forth in Column B (an "Employment Shortfall"), then upon demand by ESD, Grantee shall be obligated to repay to ESD a portion of each disbursement of the Grant, as follows:

The Recapture Amount is based on the time that has lapsed between when the Grant funds were disbursed and when the Employment Shortfall occurred. The Recapture Amount

shall be calculated by aggregating the Recapture Amount for each disbursement of the Grant, which in each instance shall be equal to:

- (i) 100% of the disbursed amount if the Employment Shortfall occurred in the calendar year that the disbursement was made, or in the first full calendar year after the disbursement was made;
- (ii) 80% of the disbursed amount if the Employment Shortfall occurred in the second full calendar year after the disbursement was made;
- (iii) 60% of the disbursed amount if the Employment Shortfall occurred in the third full calendar year after the disbursement was made;
- (iv) 40% of the disbursed amount if the Employment Shortfall occurred in the fourth full calendar year after the disbursement was made;
- (v) 20% of the disbursed amount if the Employment Shortfall occurred in the fifth full calendar year after the disbursement was made.

The Grantee’s number of Full-time Permanent Employees shall be deemed to be the greater of the number as of the last payroll date in the month of December for such year or the average employment for the 12 month period computed by quarter.

Baseline Employment	247
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A	B
Reporting Date	Employment Goals
February 1, 2011	247+X+Y
February 1, 2012	247+X+Y
February 1, 2013	247+X+Y
February 1, 2014	247+X+Y

X = Grantee's Employment Increment that will be the basis of the Second Disbursement of the Grant as described in section C.5 above (i.e. X=62, and Employment Goals shall equal [247 + X = 309] if the Second Disbursement is made, in the year such disbursement is made and for each year thereafter). If the Second Disbursement has not yet been made then X=0.

Y = Grantee’s Employment Increment that will be the basis of the Third Disbursement of the Grant as described in section C.5 above (i.e. Y=47, and Employment Goals shall equal [247 + X + Y = 356] if the Third Disbursement is made, in the year such disbursement is made and for each year thereafter). If the Third Disbursement has not yet been made then Y=0.

IV. Statutory Basis

1. The proposed project would promote the economic health of New York State by facilitating the creation or retention of jobs or would increase activity within a municipality or region of the state or would enhance or help to maintain the economic viability of family farms.

As a result of this project, the Company will maintain its employment level of 284 (inclusive of 37 jobs that will be relocated from Rome to Utica), including retention of 284

jobs which were at risk of relocation to another state. In addition, the Company will create 72 new jobs.

2. The proposed project would be unlikely to take place in New York State without the requested assistance.

The Company considered relocating its operations to Ohio, Pennsylvania, North Carolina, South Carolina or Virginia. ESD's assistance helped to reduce costs and make the project feasible in New York.

3. The project is reasonably likely to accomplish its stated objectives and the likely benefits of the project exceed costs.

Benefit/Cost analysis will be incorporated prior to submission of early final materials.

4. The requirements of Section 10(g) of the Act are satisfied.

No residential relocation is required because there are no families or individuals residing on the site.

V. Environmental Review

Environmental language will be incorporated prior to submission of early final materials.

VI. Affirmative Action

ESD's Non-discrimination and Affirmative Action policy will apply. ECR International, Inc. agrees to use its best efforts to include minorities and women in any job opportunities created by the Project and to solicit and utilize Minority and Women-owned Business Enterprises for any contractual opportunities generated in connection with the Project.

VII. ESD Financial Assistance Subject to Availability of Funds and Additional Approval

The provision of ESD financial assistance is contingent upon the availability of funds and the approval of the State Division of the Budget.

VIII. Additional Submissions to Directors

Resolutions
New York State Map
Project Finance Memorandum
Cost-Benefit Analysis

September 17, 2009

Utica, Dunkirk (Oneida County, Chautauqua County) – ECR International Capital – Empire State Economic Development Fund - General Development Financing (Capital Grant) – Findings and Determinations Pursuant to Sections 16-m and 10 (g) of the Act; Authorization to Adopt the Proposed General Project Plan; Authorization to Make a Grant and to Take Related Actions

RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation, relating to the ECR International Capital - Empire State Economic Development Fund - General Development Financing (Capital Grant) Project (the “Project”), the Corporation hereby determines pursuant to Sections 16-m and 10 (g) of the New York State Urban Development Corporation Act of 1968, as amended (the “Act”), that

1. The proposed project would promote the economic health of New York State by facilitating the creation or retention of jobs or would increase activity within a municipality or region of the state or would enhance or help to maintain the economic viability of family farms;
2. The project would be unlikely to take place in New York State without the requested assistance;
3. The project is reasonably likely to accomplish its stated objectives and that the likely benefits of the project exceed costs;
4. There are no families or individuals to be displaced from the project area; and be it further

RESOLVED, that the Corporation does hereby adopt, subject to the requirements of Section 16(2) of the Act, the proposed General Project Plan (the “Plan”) for the Project submitted to this meeting, together with such changes therein as the Chairman and Chief Executive Officer-Designate of the Corporation or his designee(s) may deem appropriate, a copy of which Plan, together with such changes, is hereby ordered filed with the records of the Corporation; and be it further

RESOLVED, that upon written finding of the Chairman and Chief Executive Officer-Designate of the Corporation or his designee(s) that no substantive negative testimony or comment has been received at the public hearing held on the Plan, such Plan shall be effective at the conclusion of such hearing, and that upon such written finding being made, the Chairman and Chief Executive Officer-Designate of the Corporation or his designee(s) be, and each of them hereby is, authorized to make to ECR International, Inc. a grant for a total amount not to exceed One Million Dollars (\$1,000,000) from the Empire State Economic Development Fund, for the purposes, and substantially on the terms and conditions, set forth in the materials presented to this meeting, with such changes as the Chairman and Chief Executive Officer-Designate of the Corporation or his designee(s) may deem appropriate, subject to the availability of funds and the approval of the State Division of the Budget; and be it further

RESOLVED, that the Chairman and Chief Executive Officer-Designate of the Corporation or his

designee(s) be, subsequent to the making of the grant, and each of them hereby is, authorized to take such actions and make such modifications to the terms of the grant as he or she may deem necessary or appropriate in the administration of the grant; and be it further

RESOLVED, that the provision of ESD financial assistance is expressly contingent upon: (1) the approval of the Public Authorities Control Board, if applicable, and (2) receipt of all other necessary approvals; and be it further

RESOLVED, that the Chairman and Chief Executive Officer-Designate of the Corporation or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to execute and deliver any and all documents and to take all actions as he or she may in his or her sole discretion consider to be necessary or proper to effectuate the foregoing resolutions.

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September 17, 2009

Utica, Dunkirk (Oneida County, Chautauqua County) – ECR International Capital – Empire State Economic Development Fund - General Development Financing (Capital Grant) – Determination of No Significant Effect on the Environment

RESOLVED, that based on the material submitted to the Directors with respect to the ECR International Capital Project, the Corporation hereby determines that the proposed action will not have a significant effect on the environment.

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