

HUDSON RIVER-BLACK RIVER REGULATING DISTRICT

AND

ERIE BOULEVARD HYDROPOWER, L.P.

RESERVOIR OPERATING AGREEMENT

Dated as of

July 1, 2003

RESERVOIR OPERATING AGREEMENT (this "Agreement") made as of July 1, 2003, by and between **HUDSON RIVER-BLACK RIVER REGULATING DISTRICT**, a public corporation organized and existing under the laws of the State of New York, having offices at 350 Northern Boulevard, Albany, New York 12204 (hereinafter the "District"), and **ERIE BOULEVARD HYDROPOWER, L.P.**, a Delaware limited partnership having offices at 225 Greenfield Parkway, Suite 205, Liverpool, New York 13088 (hereinafter the "Erie").

WITNESSETH:

1. The District was organized pursuant to Title 21 of Article 15 of the New York Environmental Conservation Law to construct, own, maintain and operate reservoirs within the jurisdiction of the District including reservoirs located on the Hudson River and their tributaries for the public purposes as provided under the Regulations [as such term is hereinafter defined], including, but not limited to, regulating the flow of streams, when required by the public welfare, including the public health and safety.
2. The District is further subject to a license granted by the Federal Energy Regulatory Commission (FERC Project No. 12252) pertaining to its Greater Sacandaga Lake and Conklingville Dam facilities.
3. Erie is an electric generator which owns and operates the Plant [as such term is hereinafter defined] pursuant to a license granted by the Federal Energy Regulatory Commission (FERC Project No. 2318) for the purpose of providing electric service to its customers in Upstate New York.
4. The District and New York Power and Light Corporation, which was the predecessor of Niagara Mohawk Power Corporation ("Niagara"), which is the predecessor in interest of Erie in the Plant, entered into an Agreement dated November 14, 1927 (the "1927 Agreement"), pursuant to which, (A) the District agreed to construct a regulating reservoir on the Sacandaga River (which reservoir has been constructed and is now known as the Great Sacandaga Lake) and to impound waters by a dam (which dam has been constructed and is now known as the Conklingville [as such term is hereinafter defined]) with a total head of 71 feet near Conklingville, Saratoga County, New York and (B) Niagara agreed to (i) convey certain lands to the District as the site for said dam, reserving for its own purposes the then existing 15 feet of head on the Sacandaga River and the use of water naturally flowing with the Sacandaga River, (ii) construct a power house (which power house has been constructed and is now known as the Plant) to generate electric energy from Niagara's 15 feet of head and the District's additional 56 feet of head created by the District's dam and (iii) annually pay to the District certain sums of money for the right to use the District's 56 feet of head and to take into, and use in, the Plant water from the District's dam and additional sums of money in payment of the District's bond issue for the construction and in payment of the District's annual operation and maintenance costs, of the Sacandaga [as such term is hereinafter defined].

5. Upon expiration of the 1927 Agreement, the District and Niagara entered into an Agreement dated June 17, 1980 (the "1980 Agreement") to provide for the continued operation of the Sacandaga for the public purposes as provided under the Regulations, and so that the water impounded by Conklingville may be taken directly (when, as and if released by the District for the regulation of the flow of the river) into the Plant for the purpose of producing electric energy from Niagara's 15 feet of head and the District's 56 feet of head.

6. Niagara and Erie entered into an Asset Sale Agreement dated December 2, 1998 pursuant to which the Plant, and the 1980 Agreement, were sold, assigned and transferred from Niagara to Erie.

7. Disputes have arisen between the District, Erie and Niagara regarding the performance by the parties of the 1980 Agreement.

8. In order to resolve the disputes, the District, Erie and Niagara desire to execute and deliver a mutual release in the form set forth as Exhibit "A" annexed hereto and the District and Erie desire to terminate the 1980 Agreement and replace it with this Agreement and the Letter Agreement [as such term is hereinafter defined] in the form attached as Exhibit "B" hereto, on the terms and conditions herein and therein contained.

NOW, THEREFORE, in consideration of the terms hereof and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Erie and the District mutually agree as follows:

ARTICLE I

DEFINITIONS; CONSTRUCTION; INTENT

Section 1.1 Definitions. Capitalized terms used in this Agreement shall have the meaning given to them in this Article I, unless the context otherwise requires.

"Act" means Title 21 of Article 15 of the State Environmental Conservation Law and the regulations promulgated thereunder, as amended from time to time, and as interpreted by the New York State Department of Environmental Conservation, including Exhibit "C" annexed hereto.

"Affiliate" shall mean Reliant [as such term is hereinafter defined] and any Person: (i) who directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Reliant or any general partner of Reliant; (ii) who beneficially owns or holds 5% or more of any class of the Voting Stock of Reliant or any general partner of Reliant; or (iii) who beneficially owns or holds 5% or more of the Voting Stock (or in the case of a Person which is not a corporation, 5% or more of the equity interest) of which is beneficially owned or held by Reliant or any general partner of Reliant. For purposes hereof, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of Voting Stock, by contract or otherwise.

"Authorized Representative" means an officer, employee or agent of Erie or the District who is knowledgeable or experienced with respect to the matter or task in question and designated by such party to act on such party's behalf. Each party shall upon request provide to the requesting party a list of its Authorized Representatives, telephone numbers, addresses and the matters or tasks for which such Person is knowledgeable or experienced.

"Bulkhead Gates Operating Agreement" means the Bulkhead Gates Operating Agreement dated December 2, 2002, between Erie and the District, as the same may be amended, modified, supplemented or restated from time to time.

"Conklingville" means the dam owned, operated and maintained by the District and known as the Conklingville Dam.

"District Documents" means this Agreement and any other agreements, documents and instruments to which the District is a party and which are executed and delivered in connection with this Agreement or the transactions contemplated hereby.

"Erie Documents" means this Agreement and any other agreements, documents and instruments to which Erie is a party and which are executed and delivered in connection with this Agreement or the transactions contemplated hereby.

"Erie Facilities" means the Plant and the other hydroelectric energy generation plants and facilities owned by Erie as of the date hereof and located downstream of Sacandaga as such facilities are modified from time to time.

"Event of Non-Cooperation by Erie" means any instance of failure by Erie to cooperate with the District as determined by an arbiter or professional arbitrator in accordance with the dispute resolution procedures set forth in Article VI hereof. Such non-cooperation shall be limited to Erie's failure to observe and perform the terms, conditions and covenants of this Agreement and the Letter Agreement.

"Event of Non-Cooperation by the District" means any instance of failure by the District to cooperate with Erie as determined by an arbiter or professional arbitrator in accordance with the dispute resolution procedures set forth in Article VI hereof and such instance of failure results in a reduction of hydroelectric energy generation at any one (1) Erie Facility with a loss of revenues at said Erie Facility in an amount of \$25,000 or more as determined by financial statements certified by an officer of Reliant or Erie and furnished to the District. Such non-cooperation shall be limited to the District's failure to observe and perform the terms, conditions and covenants of this Agreement and the Letter Agreement.

"FERC" means the Federal Energy Regulatory Commission and any successor thereto.

"FERC License" means, individually or collectively as the context requires, the license for the Plant, FERC Project Nos. 2318-002 and 2318-011 issued September 25, 2002; the license for Conklingville and Sacandaga, FERC Project No. 12252-000 issued September 25, 2002; and to the extent the foregoing are amended, modified or supplemented thereby, and the Order Approving Offer of Settlement dated September 25, 2002, issued by FERC, as the same may be amended, modified, supplemented or restated from time to time.

"General Partner" means Orion Power New York G.P., Inc. a Delaware corporation.

"Letter Agreement" means the letter agreement dated of even date herewith between the District and Erie with respect to the District's Stillwater Reservoir and Erie's Stillwater Facilities as such letter agreement may be amended, restated or supplemented from time to time.

"Person" means any natural person, firm, partnership, association, limited liability company, corporation, company or public body.

"Plant" means the E.J. West Hydroelectric Plant owned and operated by Erie located in the Town of Hadley, Saratoga County, New York, and any modifications thereto.

"Regulations" means the Act, the FERC License, the Settlement Agreement, and any applicable state or federal law.

"Reliant" means Reliant Resources, Inc., a Delaware corporation which is an Affiliate of Erie.

"Sacandaga" means Conklingville and the reservoir owned, operated and maintained by the District and known as the Great Sacandaga Lake.

"Senior Representative" means with respect to Erie, a Managing Director of Erie or Reliant or an officer or employee of Erie or Reliant designated by such Senior Representative who is familiar with this Agreement and has authority to approve on Erie's behalf resolution of any dispute pursuant to Section 6.1 of this Agreement and with respect to the District, means the Executive Director of the District or the Executive Director's designee who has authority to approve on the District's behalf resolution of any dispute pursuant to Section 6.1 of this Agreement.

"Settlement Agreement" means the Offer of Settlement dated April 17, 2000, amongst the District, Erie and other settlement signatories, including a number of statutorily identified District beneficiaries, as amended on July 23, 2001 and as the same may be hereafter amended from time to time.

"State" means the State of New York.

"Voting Stock" shall mean securities of any class or classes of a corporation the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the corporate directors (or Persons performing similar functions).

"Water Fee" has the meaning given to such term in Section 5.1 of this Agreement.

Section 1.2 Construction.

(a) The singular form of any word used in this Agreement, including the terms defined in Section 1.1, includes the plural, and vice versa, unless the context otherwise requires. The use in this Agreement of a pronoun of any gender includes correlative words of the other genders.

(b) All references in this Agreement to "Articles", "Sections" and other subdivisions are to the corresponding Articles, Sections or other subdivisions of this Agreement; the words "in this Agreement", "of this Agreement", "under this Agreement" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision of this Agreement.

(c) Any captions, headings or titles of the Articles and Sections of this Agreement are solely for convenience of reference, do not limit or otherwise affect the meaning, construction or effect of this Agreement or describe the scope or intent of any provision of this Agreement.

(d) All accounting terms not otherwise defined in this Agreement have the meanings assigned to them in accordance with applicable generally accepted accounting principles as in effect from time to time.

(e) Every "request", "order", "demand", "direction", "application", "appointment", "notice", "statement", "certificate", "consent" or similar action under this Agreement by any party shall, unless the form to be used is specifically provided, be in writing and signed by a duly authorized representative of such party with a duly authorized signature.

(f) All references in this Agreement to "counsel fees", "attorneys' fees" or the like shall mean and include fees and disbursements allocable to in-house or of outside counsel, whether or not suit is instituted, and include fees and disbursements preparatory to and during trial and appeal and in any bankruptcy or arbitration proceeding.

(g) Whenever the term "includes" or "including" is used in this Agreement, such terms mean "includes or including by way of example and not limitation".

Section 1.3 Intent of this Agreement. The parties acknowledge that it is the intent of this Agreement that:

(a) To the fullest extent permitted by the Regulations, the District and Erie shall use their best efforts to cooperate in the operation of the Sacandaga for the District's public purposes as provided under the Regulations and to maximize Erie's hydroelectric energy generation at, and revenues from, the Erie Facilities.

(b) The parties shall establish and maintain throughout the term and any extended term of this Agreement open communication regarding, without limitation, the operation of the Sacandaga and the Erie Facilities, the impact of such operation on the Sacandaga and the Erie Facilities and the performance by the parties of this Agreement, provided that nothing contained in this Agreement shall be construed to obligate or require either party to disclose any proprietary or other confidential information or any trade secrets with respect to the District, the Sacandaga, Erie, the Erie Facilities or the financial condition or operations thereof, and provided further that nothing in this clause (b) shall be construed as a waiver by Erie of its right to receive information from the District pursuant to the State Freedom of Information Law, as in effect from time to time.

(c) To the fullest extent permitted by the Regulations, the District and Erie shall use commercially reasonable efforts to cooperate with each other in the operation of the Sacandaga for the District's public purposes as provided under the Regulations, and to maximize hydroelectric energy generation and revenue by the Erie Facilities. Such cooperation by the District and Erie may include without limitation:

(i) Scheduling and causing Authorized Representatives to attend regular meetings and/or conference calls between the parties to use their best efforts to plan and coordinate short-term (up to 7 day) operation of the Sacandaga for the District's public

purposes as provided under the Regulations and to maximize Erie's hydroelectric energy generation at the Erie Facilities.

(ii) Scheduling releases from the Sacandaga, in a cooperative manner with Erie, for the District's public purposes as provided under the Regulations and to account for energy market conditions and maintenance of the Erie Facilities, thereby maximizing hydroelectric energy generation and revenue by the Erie Facilities.

(iii) Discussing changes to the District operation plans or procedures affecting the Sacandaga prior to implementation of such changes with an intent to operate the Sacandaga for the District's public purposes as provided under the Regulations and to maximize hydroelectric energy generation and revenue by the Erie Facilities.

(iv) Mutually determining if additional stream flow gauges are appropriate or necessary at the Sacandaga and if so, cooperating in the acquisition and the installation thereof, including, equitable pro-ration of costs thereof between the parties.

(v) Working jointly to coordinate, collect and share snow survey information on an immediate basis in an effort to increase accuracy and reduce the cost of said collection.

(vi) Cooperating to implement and respond to appropriate Articles of mutual interest in the FERC License, including, but not limited to, Article 302 thereof.

(vii) Conferring as needed for clarification and agreement regarding the Sacandaga operational measures set forth in the FERC License.

(d) The difference in water fees between the 1980 Agreement and this Agreement due the District from Erie therein and herein, if reduced, shall be recovered by the District from means other than an increase in the District's annual statutory assessments of operation and maintenance expenses pursuant to Section 15-2125 of the Act. (For purposes of this Section of this Agreement, the water fees due under the 1980 Agreement are determined to be \$925,000.00).

(e) The obligations of the parties relating to the operation and use of water from the District's Stillwater Reservoir shall be governed solely by the Letter Agreement and applicable State and federal law, provided that an Event of Non-Cooperation by the District or an Event of Non-Cooperation by Erie under the Letter Agreement shall constitute an Event of Non-Cooperation of the respective party for purposes of Section 5.2 of this Agreement.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of the District.

The District makes the following representations and warranties to Erie as of and from the date of the execution and delivery of this Agreement as the basis for the undertakings on its part herein contained:

(a) the District is a public body corporate and politic, duly organized and existing under the laws of the State.

(b) the District has complied with the provisions of the Act and laws of the State which are prerequisites to the execution and delivery of this Agreement and no approvals are required (that have not yet been obtained) for the District's execution and delivery of this Agreement.

(c) the District has the full legal right, power and authority to execute and deliver this Agreement and all other District Documents and to carry out its obligations under this Agreement and the other District Documents.

(d) this Agreement and the other District Documents have been duly executed and delivered by the District and upon execution and delivery by the other party or parties thereto, will be the legal, valid and binding obligation of the District, enforceable against the District in accordance with their respective terms, except as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting generally the enforcement of creditors' rights, and except to the extent that availability of the remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceeding therefor may be brought.

(e) neither the execution and delivery of the District Documents, the closing of the transactions provided for in this Agreement nor the fulfillment of or compliance with the terms, conditions or provisions of the District Documents violates the laws of the State (to the knowledge of the District), the FERC License or any judgment, order, writ, injunction or decree to which the District is subject, or conflicts in any material respect with, or results in a material breach of any of the terms, conditions or provisions of, or constitutes a material default under, any agreement or instrument which the District is now a party or by which it is bound.

(f) the District has complied and will comply with all provisions of the Act and the FERC License held by the District applicable to this Agreement and the transactions provided for in the District Documents.

(g) no action of any nature is pending against the District (i) seeking to restrain or enjoin the execution or delivery of any District Document, (ii) questioning the proceedings or authority relating to any District Document or (iii) questioning the existence or authority of the District or that of its present or former members or officers; and to the best of the District's knowledge no such action is threatened.

(h) no member of the District, nor any other official or employee of the District, has any interest, financial, employment or other, in Erie, the Plant or in the transactions contemplated hereby.

Section 2.2 Representations by Erie. Erie makes the following representations and warranties to the District as of and from the date of the execution and delivery of this Agreement as the basis for the undertakings on its part herein contained:

(a) Erie is, and at all times will be, a limited partnership, duly organized, validly existing and in good standing under the laws of Delaware and authorized to do business in and in good standing under the laws of the State. The General Partner is a corporation duly organized, validly existing and in good standing under the laws of Delaware and authorized to do business in and in good standing under the laws of the State. Each of Erie and the General Partner has, and will at all times have, all requisite power to own its property and conduct its business as now conducted and as presently contemplated, to execute and deliver this Agreement and the other Erie Documents and to perform its duties and obligations hereunder and thereunder.

(b) the execution, delivery and performance of this Agreement and the other Erie Documents and the transactions contemplated thereby (i) are within the authority of Erie and the General Partner, (ii) have been duly authorized by all necessary proceedings on the part of Erie and the General Partner, (iii) do not conflict with or result in any breach or contravention of the FERC License, any provision of law, statute, rule or regulation to which Erie and the General Partner is subject (to the knowledge of Erie and the General Partner) or any judgment, order, writ, injunction, license or permit applicable to Erie and the General Partner, (iv) do not conflict with any provision of the Certificate of Limited Partnership or partnership agreement of Erie or the corporate charter or by-laws of the General Partner, (v) do not require the approval or consent of, or filing with, any governmental agency or authority other than those already obtained; and (vi) do not conflict in any material respect with, or do not result in a material breach of any of the terms, conditions or provisions of, or do not constitute a material default under, any agreement or instrument which Erie or the General Partner is a party or by which it is bound.

(c) the execution and delivery of this Agreement and the other Erie Documents will result in valid and legally binding obligations of Erie and the General Partner enforceable against them in accordance with the respective terms and provisions hereof and thereof, except as enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting generally the enforcement of creditors' rights, and except to the extent that availability of the remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceeding therefor may be brought.

(d) no action of any nature is pending against Erie (i) seeking to restrain or enjoin the execution or delivery of any Erie Document, (ii) questioning the proceedings or authority relating to any Erie Document or (iii) questioning the existence or authority of Erie or that of its present or former members, directors or officers; and to the best of Erie's knowledge no such action is threatened.

(e) Erie has complied, and will comply, with all provisions of the FERC License held by Erie applicable to this Agreement and the transactions provided for in the Erie Documents.

ARTICLE III

TERM OF AGREEMENT

Section 3.1 Term and Renewal. This Agreement shall commence as of July 1, 2003 and shall continue in full force and effect until June 30, 2015 unless terminated as of an earlier date as otherwise provided herein. The District and Erie hereto agree to meet or initiate discussions on or before June 30, 2014 to discuss the extension or renegotiation of this Agreement.

Section 3.2 Early Termination. This Agreement shall terminate upon the occurrence of a determination by any Person having jurisdiction over the District that the Water Fee is in lieu of, or, in any way includes, those charges, fees and costs due the District from Erie or any other Person pursuant to any statutory obligations including, but not limited to, those charges, fees and costs due the District from Erie or any other Person pursuant to Sections 15-2121, 15-2123 and 15-2125 of the Act.

ARTICLE IV

COVENANTS

Section 4.1 Covenants of the District.

(a) Throughout the term of this Agreement, to the extent permitted by the Regulations, the District shall use its best efforts to operate and maintain the Sacandaga so that water impounded by the Sacandaga may be utilized for the District's public purposes as provided under the Regulations (which purposes include, but are not limited to, the regulation of the flow of streams as required for the public welfare, including the public health and safety), and by the Erie Facilities for the production of electric energy in a manner that maximizes hydroelectric energy generation by such facilities and revenues therefrom.

Section 4.2 Covenants of Erie.

(a) Throughout the term of this Agreement, Erie shall use its best efforts to cooperate with the District in the operation and maintenance of the Sacandaga and the Erie Facilities so that water impounded by the Sacandaga may be utilized in accordance with the Regulations and for the District's public purposes as provided under the Regulations (which purposes include, but are not limited to, the regulation of the flow of streams as required for the public welfare, including the public health and safety) and to maximize Erie's hydroelectric energy generation at, and revenues from, the Erie Facilities.

(b) Erie shall maintain the Erie Facilities in a condition which comports with good industry practice.

Section 4.3 Mutual Covenants.

(a) Erie and the District shall cause their Authorized Representatives and other key employees to participate upon not less than 30 days' written request made not more than once each calendar year during the term of this Agreement in educational seminars and training exercises conducted by the requesting party to describe the requesting party's business operations. Each party shall be responsible for its own costs of conducting and participating in such seminars and sessions. Such seminars and sessions shall not without the consent of the non-requesting party have a duration in excess of three 8-hour days in any single calendar year. Such seminars and sessions shall be conducted during regular business hours at the principal office of the requesting party, the Erie Facilities or such other location as shall be mutually agreed upon by the parties.

(b) Erie and the District shall cause Authorized Representatives and other key employees to attend and participate in not less than nine (9) meetings each calendar year (to be conducted annually during the months of January, February, March, April, July, August, September, and November) to discuss operations of the Erie Facilities and the Sacandaga including without limitation non-compliance with this Agreement, results of water flow and snow surveys and reports, release scheduling, hydroelectric energy market conditions,


scheduled maintenance and shutdowns, the FERC License, other regulatory matters and such other matters as shall be suggested by Erie or the District or otherwise further the intent and purposes of this Agreement.

(c) To the extent permitted by the Regulations, the District and Erie shall develop a weekly release schedule (by day) for the Sacandaga for the District's public purposes as provided under the Regulations, and to maximize hydroelectric energy generation and revenue by the Erie Facilities. The weekly release schedule would consist of daily flow targets in addition to Scheduled High Flow Limits and Scheduled Low Flow Limits for each day. The Scheduled High Flow Limit and Scheduled Low Flow Limit shall be those maximum limits allowed by the FERC License. If market conditions or maintenance issues require, Erie may upon four (4) hours' advance notice, deviate from the daily flow target while staying within the Scheduled High Flow and Scheduled Low Flow Limits without further approval from the District.

Section 4.4 Release; Indemnification; Remedies

(a) Each of Erie and the District, on behalf of itself and on behalf of any person or entity claiming by, through or under it, does hereby release and forever discharge each other party, and its respective officers, directors, trustees, shareholders, predecessors, agents, employees, representatives, attorneys, accountants and their successors and assigns (collectively, the "Released Parties"), from any and all claims, demands, judgments, liabilities, damages, and causes of action of every kind and character (whether such claim arise in contract or tort, and whether such claims are founded upon statutory or common law, including, but not limited to, breach of contract, negligence, breach of any duty of good faith and fair dealing, business torts, breach of warranty, or any other cause of action whatsoever), whether such claims are known or unknown, at law or in equity (collectively, "Claims"), arising out of or in any way related to the 1980 Agreement or the transactions contemplated thereby, which such party may now have against the Released Parties (to the extent that such Claims originated in whole or in part, or based on presently existing facts could have originated in whole or in part, on or before the date hereof).

(b) Erie agrees to defend, indemnify and hold harmless the District, its respective officers, directors, trustees, shareholders, predecessors, agents, employees, representatives, attorneys, accountants and their successors and assigns from and against attorneys' fees arising out of any claim, action, demand, penalty, fine, liability or settlement substantially related to the District's obligation to use its best efforts to maximize Erie's hydroelectric energy generation at, and revenues from, the Erie Facilities as set forth herein; provided, however, that (i) Erie shall promptly receive notice of such claim, action, demand, penalty, fine, liability or settlement (ii) Erie shall, in no event, be liable for attorney's fees in excess of \$25,000.00 for each such claim, action, demand, penalty, fine, liability or settlement and (iii) Erie shall, in no event, be liable for attorney's fees in excess of two (2) such claims, actions, demands, penalties, fines, liabilities or settlements the events of which arise in any one (1) year of the term herein.



(c) Notwithstanding any other provision to the contrary set forth herein, and without limiting the foregoing release and indemnification, the remedies available to the District or to Erie hereunder shall be limited to (i) in accordance with Article VI hereof, a determination of an Event of Non-Cooperation by the District or a determination of an Event of Non-Cooperation by Erie, as the case may be, (ii) an action to compel specific performance or (iii) an action for breach of contract under the terms hereof; provided, however, that, for any action for breach of contract substantially related to or arising out of any failure by the District to cooperate with Erie resulting in a reduction of hydroelectric energy generation at, and revenues from, any Erie Facility, the District shall, in no event, be liable (in addition to an adjustment, if any, in the Water Fee) for any amount in excess of \$50,000 for any such actions the events of which arise in any one (1) year of the term herein.

(d) Notwithstanding the foregoing limitation on indemnification, and, subject to the provisions of Section 1.3(d) herein, any other provision, term or condition set forth herein, nothing contained herein shall in any way be construed to limit the District's ability to assess and apportion the District's statutorily defined beneficiaries, including, but not limited to, Erie, in accordance with State statute, including, but not limited to, the District's ability to assess and apportion the District's operation and maintenance expenses in accordance with Sections 15-2121, 15-2123 and 15-2125 of the Act.

(e) For the purposes of this Section 4.4, a year shall mean the time period commencing on July 1st of each year and ending on June 30th of the next succeeding year.

ARTICLE V

WATER FEES

Section 5.1 Water Flow Charge. Commencing July 1, 2003 and annually thereafter during the term of this Agreement, Erie shall pay, in advance, in twelve equal monthly installments to the District for the right to use the District's 56 feet of head and to take into, and use in, the Plant water from the District's dam, the annual sum of Eight Hundred and Fifty Thousand Dollars (\$850,000.00) ("Water Fee"). During the term of this Agreement, the Water Fee shall increase (unless waived as provided in Section 5.2 of this Agreement) by three percent (3%) on a compounded basis effective as of July 1 of each calendar year ("Water Fee Increase"). The monthly installment of the Water Fee shall be payable on the 15th of each month during the term without notice or demand in immediately available funds to the District. The increase in the Water Fee for any annual period shall be waived in the circumstances set forth in Section 5.2 of this Agreement.

Section 5.2 Adjustment of Water Fee.

Upon the occurrence, within any three (3) calendar year period, of three (3) separate and consecutive determinations of an Event of Non-Cooperation by the District, the Water Fee Increase shall be waived for the next succeeding year; provided, however, that any Water Fee Increase waived shall continue to be taken into account for purposes of determining any future Water Fee Increase; and provided, further, that no Event of Non-Cooperation by Erie shall have been determined to have occurred during the same calendar year period as the respective Events of Non-Cooperation by the District. A waiver of the Water Fee to which Erie is entitled under this Section 5.2 is referred to herein and in the Letter Agreement as an "Adjustment in the Water Fee."

For example, if, by 2012, a determination of an Event of Non-Cooperation by the District has been made in 2004, twice in 2006, 2007, and twice in 2011, then Erie shall be entitled to an Adjustment of the Water Fee after the third determination of an Event of Non-Cooperation by the District in 2006 and, again, since there are already two (2) separate and consecutive determinations of an Event of Non-Cooperation by the District in 2011, in 2013, if there is a determination of an Event of Non-Cooperation by the District in 2013.

In addition, using the above referenced scenario, although there are three (3) separate and consecutive determinations of an Event of Non-Cooperation by the District in the period 2007-2011, Erie is not entitled to an Adjustment of the Water Fee in 2011 because the three (3) separate and consecutive determinations of an Event of Non-Cooperation by the District did not occur within any three (3) year period. Furthermore, although there are three (3) separate and consecutive determinations of an Event of Non-Cooperation by the District with a three (3) year period from 2006-2007, Erie is also not entitled to an Adjustment of the Water Fee in 2007 because the two (2) determinations of an Event of Non-Cooperation by the District in 2006 have already been "used" to effect the first Adjustment in the Water Fee in 2006.

Finally, using the same scenario above, if there had been a determination of an Event of Non-Cooperation by Erie in 2005, then Erie would have been entitled to an Adjustment of Water Fee after the third (3) separate and consecutive determination of an Event of Non-Cooperation by the District in 2007 - not 2006 - as the determination of an Event of Non-Cooperation by Erie in 2005 bars "use" of the determination of an Event of Non-Cooperation by the District in 2004 as said determination is no longer a consecutive determination with those made in 2006.

Section 5.3 Relation to the Act

The District and Erie hereby agree that said Water Fee is in addition to, and does not, in any way, include, any charges, fees or costs due the District from Erie or any other Person pursuant to any statutory obligations including, but not limited to, those charges, fees and costs due the District from Erie or any other Person pursuant to Sections 15-2121, 15-2123 and 15-2125 of the Act.

ARTICLE VI

DISPUTE RESOLUTION

Section 6.1 Internal Review. In any case in which a dispute arises under this Agreement or the Letter Agreement with respect to the performance or observance by either party of its obligations hereunder or thereunder to cooperate, either party must, within thirty (30) days of the occurrence of such dispute, notify the Senior Representatives and request a review of the dispute. The party seeking review ("**disputing party**") shall furnish the Senior Representatives of Erie and the District with a written description of the dispute and such other data or factual information as shall be relevant to the dispute or its resolution. The other party may supplement any such submission in a writing furnished to the Senior Representatives by the disputing party. The Senior Representatives of Erie and the District shall promptly review all submissions and as soon as practicable schedule a meeting with each other (which may be conducted in person or telephonically) to discuss the dispute and attempt to reach a mutually satisfactory resolution. If a mutually satisfactory resolution is not reached within thirty (30) days after the initial request by the disputing party, then either party may seek outside review of such dispute pursuant to Section 6.2 of this Agreement, commence an action to compel performance or commence an action for breach of contract subject to the limitations set forth herein, including, but not limited to, those limitations set forth in Sections 4.4(c) and 7.16 hereof.

Section 6.2 Outside Review. In the event the Senior Representatives are unable within thirty (30) days after an initial request to reach a mutually satisfactory resolution of a dispute, the party hereto desiring outside review of a dispute pursuant to this Section 6.2 shall give notice (a "**Dispute Notice**") to that effect to the other party. Either party shall have the right to propose within five (5) days of the Dispute Notice a person to serve as arbiter of such dispute and in the absence of consent to such person acting as arbiter, either party may apply to the Office of the American Arbitration Association located in the City of Albany for the appointment of a professional arbitrator, who shall not be affiliated or under contract with either party and shall have at least ten (10) years of experience in the general field that is the subject of the dispute. For purposes of this Section 6.2, an "**arbiter**" shall be any person mutually agreed to by Erie and the District to conduct informal dispute resolution pursuant to this Section 6.2; the party proposing an arbiter shall identify for the other party the experience of such Person in dispute resolution (e.g., a retired judge) or other experience in the matters in dispute (e.g., retired engineer) and any present or prior affiliation of such Person with the requesting party.

Subject to the time limitations in this Section, the parties hereby acknowledge that any arbiter or professional arbitrator appointed pursuant to this Section may, at any time, consult with engineers or such other professionals as it considers appropriate in its discretion, with respect to such matters on which such professionals are qualified and experienced to advise.

The informal dispute resolution or arbitration shall be conducted without regard to the rules of discovery and the rules of evidence otherwise applicable thereto and in accordance with procedures established by the arbiter or professional arbitrator designed to provide a decision within the expedited timeframe contained in this Article; provided, however, that in the event of formal arbitration, the arbitration shall be conducted in accordance with the New York

State Civil Practice Law and Rules Article 75 and any other applicable law to the extent necessary for the decision of the professional arbitrator to be enforceable in the courts of the State. Each determination to be made hereunder by the arbiter or professional arbitrator shall be made as specified in the applicable provision of this Agreement or the Letter Agreement.

Within ten (10) days after the Dispute Notice has been delivered, both parties shall make whatever presentations as the arbiter or professional arbitrator shall deem appropriate consistent with the time limitations herein set forth. Immediately thereafter, the arbiter or professional arbitrator shall attempt to cause the parties to agree on a resolution to the dispute and, failing that, the arbiter or professional arbitrator shall then make its decision within ten (10) days thereafter and the decision shall be made with sufficient specificity to enable any party to take any remedial action required thereby. The costs of any dispute resolution or formal arbitration, including costs incurred by or payable to the arbiter or professional arbitrators in any such proceeding shall be borne equally by both parties and each party shall be responsible for costs of its own attorneys and other experts; provided, however, that if the arbiter or professional arbitrator determines that one of the parties acted in bad faith in connection with such dispute, then the party acting in bad faith shall be obligated to pay all costs of the outside dispute resolution or arbitration including all reasonable attorneys' fees and consulting fees of the other party in connection with the dispute resolution or arbitration.

The arbiter or professional arbitrator shall have no power to vary or modify any of the provisions of this Agreement or the Letter Agreement, and its powers and jurisdiction are hereby limited accordingly. The sole remedy that may be granted by an arbiter or professional arbitrator hereunder or under the Letter Agreement shall be limited to a determination of an Event of Non-Cooperation by Erie or an Event of Non-Cooperation by the District or a determination of ongoing and continuous breach as set forth in Section 7.16 of this Agreement, as the case may be, unless otherwise mutually agreed to in writing by the parties hereto.

ARTICLE VII

MISCELLANEOUS

Section 7.1 Notices. Unless otherwise specified in this Agreement, it shall be sufficient service or giving of any notice, request, certificate, demand or other communication for purposes hereof and of the Letter Agreement if the same shall be sent by (and all notices required to be given by mail shall be given by) first-class registered or certified mail, postage prepaid, return receipt requested, or by private courier service which provides evidence of delivery, or sent by telecopy or other electronic means which produces evidence of transmission, confirmed by first-class mail, and in each case shall be deemed to have been given on the date evidenced by the postal or courier receipt or other written evidence of delivery or electronic transmission. Unless a different address is given by any party as provided in this Section 7.1, all such communications shall be addressed as follows:

To the District:	350 Northern Boulevard Albany, New York 12204 Attn: Willard W. Loveless
To Erie:	225 Greenfield Parkway Suite 205 Liverpool, New York 13088 Attn: David J. Youlen
With a copy to:	Hiscock & Barclay Financial Plaza 221 South Warren Street PO Box 4878 Syracuse, New York 13221-4878 Attn: Karla M. Corpus, Esq.

By notice given under this Agreement, any party may designate further or different addresses to which subsequent notices, certificates or other communications are to be sent.

Section 7.2 Amendment. This Agreement may be amended or terminated only in writing by the parties to this Agreement.

Section 7.3 Entire Agreement. This Agreement contains all agreements among the parties to this Agreement, and there are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the parties to this Agreement, unless reference is made to them in this Agreement.

Section 7.4 Further Assurances and Corrective Instruments. The parties to this Agreement agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such amendments and supplements to this

Agreement and to the other documents contemplated by this Agreement to perfect or give further assurances of any of the rights granted or provided for in this Agreement.

Section 7.5 Binding Effect. This Agreement shall be binding upon and inure to the benefit of Erie and the District and, to the extent permitted by this Agreement, their respective successors and assigns, provided that no subsequent owner of the Plant shall be liable or obligated for the breach or default of any obligation of any prior owner under this Agreement, including, but not limited to, any payment obligation, provided that any subsequent owner shall be bound by the terms of this Agreement. Such obligations are personal to the Person who was the owner of the Plant at the time the default or breach was alleged to have occurred and such Person shall remain liable for any and all damages occasioned by the default or breach even after such Person ceases to be the owner.

Section 7.6 Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired. In case any covenant, stipulation, obligation or agreement of the District or Erie contained in this Agreement shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the District or Erie, as the case may be, to the full extent permitted by law.

Section 7.7 Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 7.8 Governing Law. This Agreement shall be governed by and interpreted in accordance with the internal laws of the State without regard to conflicts of laws principles. Without limiting the terms and conditions of this Agreement, including, but not limited to, those terms and conditions set forth in Article VI hereof, the parties hereby consent and agree that the Supreme Court in Albany County, New York shall have jurisdiction to hear and determine any claims and disputes between or among the parties hereto and thereto. Each of the parties hereto submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and waives any objection based upon lack of personal jurisdiction, improper venue or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court.

Section 7.9 Assignment. The District may not assign this Agreement or any interest herein to any Person without the prior written consent of Erie; provided, however, that no such consent shall be required for an assignment, in whole or in part, to the State or any successor public corporation established under the Act. Erie may not assign this Agreement or interest herein to any Person without the prior written consent of the District; provided, however, that said consent may not be unreasonably withheld and no such consent shall be required for an assignment, in whole or in part, to an Affiliate.

Section 7.10 Waiver. Without limiting the right of any party hereto to deliver to the other an express waiver in writing of any provision of this Agreement, the failure of any party hereto to enforce at any time any of the provisions of this Agreement shall in no way be

construed as a waiver of any of such provisions, or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.

Section 7.11 Termination of 1980 Agreement. Erie and the District hereby terminate the 1980 Agreement effective as of July 1, 2003 without further act or document and agree that this Agreement shall replace and supersede the 1980 Agreement in all respects.

Section 7.12 Agreement to Withdraw Pending Litigation.

(a) The District shall and does hereby withdraw its notice of termination of the 1980 Agreement and acquisition of the plant in accordance therein dated January 14, 2002 and agrees to file with the applicable court or other governmental entity evidence of such withdrawal as shall be reasonably requested by Erie.

(b) The District, Erie and Niagara agree to discontinue the litigation entitled Hudson River-Black River Regulating District v. Erie Boulevard Hydropower, L.P. and Niagara Mohawk Power Corporation, pending in Albany County Supreme Court, bearing Index Number 5631-01, including withdrawing any claims, counter claims or cross claims and filing a stipulation of discontinuance with the court in the form set forth in Exhibit "D" attached hereto.

(c) Notwithstanding the foregoing, the parties agree that any assessment/apportionment made by the District in accordance with the Act, and any separate assessment/apportionment litigation (existing or future) commenced by Erie and/or Niagara, may continue and shall not be subject to this Agreement.

Section 7.13 Agreement Not to Exercise Eminent Domain. The District acknowledges that exercise of eminent domain with respect to the Plant shall cause irreparable and unnecessary damage to Erie and interfere with the Plant's operation and usefulness beyond any present or future necessities arising from exercise of such power. To the extent permitted by the Regulations, the District agrees that during the term and any extended term of this Agreement, the District shall not exercise any rights available to it under the Act or otherwise to acquire the Plant by eminent domain.

Section 7.14 Bulkhead Gates Operating Agreement. The term of the Bulkhead Gates Operating Agreement will expire by its terms upon the completion of the trash rack replacement project. Notwithstanding such termination, the District agrees that Erie may request (such request not to be unreasonably denied by the District) on such terms and conditions as shall be mutually satisfactory to the parties to use the bulkhead structure for the purpose of de-watering the intake structure in connection with the headgates or trash racks. Erie agrees that the District may request (such request not to be unreasonably denied by Erie) on such terms and conditions as shall be mutually satisfactory to the parties to use Erie's power source to operate the bulkhead structure.

Section 7.15 Third Party Beneficiaries. This Agreement and all of the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns. Except to the extent Niagara derives certain benefits from the Agreement herein, nothing in this Agreement, express or implied, is intended or shall be construed to confer upon any person other than the parties hereto any remedy or claim under or by reason of this instrument, or any agreements, terms, covenants or conditions hereof, and all of the agreements, terms, covenants and conditions contained in this Agreement shall be for the sole and exclusive benefit of the parties hereto, and their permitted successors and assigns.

Section 7.16 Cumulative Remedies. The specific remedies to which either party may resort under the terms of this Agreement are cumulative and are not intended to be exclusive of any other remedies or means of redress to which they may be lawfully entitled in case of any breach or threatened breach by either of them of any provision of this Agreement; provided, however, that for those actions for breach of contract substantially related to or arising out of any failure by the District to cooperate with Erie resulting in a reduction of hydroelectric energy generation at, and revenues from, any Erie Facility, the parties hereto intend to limit Erie's remedies hereunder to a determination of an Event of Non-Cooperation by the District unless it is determined by an arbiter or professional arbitrator in accordance with Article VI that the District's actions constituting an Event of Non-Cooperation by the District are a continuous and ongoing breach of this Agreement, in which event, Erie may accept a determination of an Event of Non-Cooperation by the District in accordance with Article VI herein and commence an action for breach of contract subject to the limitations set forth herein including, but not limited to, those limitations set forth in Section 4.4(c) hereof.

IN WITNESS WHEREOF, Erie and the District have caused their respective duly authorized representatives to execute this Agreement as of July 1, 2003.

HUDSON RIVER-BLACK RIVER
REGULATING DISTRICT

By: Willard W. Loveless

Name: Willard W. Loveless

Title: Executive Director - Officers + Management

ERIE BOULEVARD HYDROPOWER, L.P.
By: ORION POWER NEW YORK G.P., INC., a
Delaware corporation, its general partner

By: Joseph J. Wagner

Name: JOSEPH J. WAGNER

Title: VICE-PRESIDENT - EASTERN OPERATIONS

EXHIBIT "A"

MUTUAL RELEASE

MUTUAL RELEASE

This **MUTUAL RELEASE** made as of July 1, 2003 is by and among the **HUDSON RIVER BLACK RIVER REGULATING DISTRICT**, a New York public benefit corporation having offices at 350 Northern Boulevard, Albany, New York 12204 (hereinafter the "**District**"), **ERIE BOULEVARD HYDROPOWER, L.P.** a Delaware limited partnership authorized to do business in the State of New York and having offices at 225 Greenfield Parkway, Suite 205, Liverpool, New York 13088 (hereinafter "**Erie**") and **NIAGARA MOHAWK POWER CORPORATION**, a New York corporation having offices 300 Erie Boulevard West, Syracuse, New York 13202-4289 (hereinafter "**Niagara**").

WITNESSTH:

WHEREAS, the District was organized pursuant to Title 21 of Article 15 of the New York Environmental Conservation Law (the "**Act**") to construct, own, maintain and operate reservoirs within the jurisdiction of the District including reservoirs located on the Hudson River, Black River and their tributaries for the primary public purpose as provided under the Act, a certain license granted by the Federal Energy Regulatory Commission (FERC Project No. 12252) pertaining to the Sacandaga Reservoir [as such term is hereinafter defined] and Conklingville Dam [as such term is hereinafter defined], a certain offer of settlement dated April 17, 2000, amongst the District, Erie and other settlement signatories, including a number of statutorily identified District beneficiaries, as amended on July 23, 2001 and as the same may be hereafter amended from time to time and all applicable federal and state laws (the "**Regulations**"), including, but not limited to, regulating the flow of streams, when required by the public welfare, including the public safety; and

WHEREAS, the District and New York Power and Light Corporation, which was the predecessor of Niagara, which is the predecessor of Erie, in the interest of the E.J. West Hydroelectric Plant (the "**Plant**"), entered into an Agreement dated November 14, 1927 (the "**1927 Agreement**"), pursuant to which, (A) the District agreed to construct a regulating reservoir on the Sacandaga River (which reservoir has been constructed and is now known as the "**Sacandaga Reservoir**") and to impound waters by a dam (which dam has been constructed and is now known as the "**Conklingville Dam**") with a total head of 71 feet near Conklingville, Saratoga County, New York and (B) Niagara agreed to (i) convey certain lands to the District as the site for said dam, reserving for its own purposes the then existing 15 feet of head on the Sacandaga River, (ii) construct a power house (which power house has been constructed and is now known as the Plant) to generate electric energy from Niagara's 15 feet of head and the District's additional 56 feet of head created by the District's dam and (iii) annually pay to the District certain sums of money for the right to use the District's 56 feet of head and to take into, and use in, the Plant water from the District's dam and additional sums of money in payment of the District's bond issue for the construction, and in payment of the District's annual operation and maintenance costs, of said reservoir and dam; and

WHEREAS, upon expiration of the 1927 Agreement, the District and Niagara entered into an Agreement dated June 17, 1980 (the "1980 Agreement") to provide for the continued operation of the District's reservoir and dam for the primary public purposes as provided under the Regulations, and so that the water impounded by said dam may be taken directly (when, as and if releases by the District for the regulation of the flow of the Rivers) into the Plant for the purpose of producing electric energy from Niagara's 15 feet of head and the District's 56 feet of head; and

WHEREAS, Niagara and Erie entered into an Asset Sale Agreement dated December 2, 1998 pursuant to which the Plant and the 1980 Agreement were sold, assigned and transferred from Niagara to Erie; and

WHEREAS, disputes have arisen between the District, Erie and Niagara regarding the performance by the parties of the 1980 Agreement; and

WHEREAS, in order to resolve the disputes, the District and Erie have executed a reservoir operating agreement dated of even date herewith (the "Reservoir Operating Agreement") and a letter agreement dated of even date herewith with respect to the District's Stillwater Reservoir and the District, Erie and Niagara desire to execute and deliver this Mutual Release in accordance with the terms and conditions hereinafter contained.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the District, Erie and Niagara do hereby agree as follows:

1. Releases. Each of the District, Erie and Niagara (collectively, the "Parties"), on behalf of itself and on behalf of any person or entity claiming by, through or under it, does hereby release and forever discharge each of the other Parties, and their respective officers, directors, trustees, shareholders, predecessors, agents, employees, representatives, attorneys, accountants and their successors and assigns (collectively, the "Released Parties"), from any and all claims, demands, judgments, liabilities, damages, and causes of action of every kind and character (whether such claim arise in contract or tort, and whether such claims are founded upon statutory or common law, including, but not limited to, breach of contract, negligence, breach of any duty of good faith and fair dealing, business torts, breach of warranty, or any other cause of action whatsoever), whether such claims are known or unknown, at law or in equity (collectively, "Claims"), arising out of or in any way related to the 1980 Agreement or the transactions contemplated thereby, which such Party may now have against the Released Parties (to the extent that such claims originated in whole or in part or, based on presently existing facts could have originated in whole or in part on or before the date hereof).

2. No Assignment. Each of the Released Parties hereby represents and warrants to each of the other Released Parties that it has not assigned or transferred or purported to assign or transfer, to any person or entity, any Claim against any Released Party, or any portion thereof or interest therein, and that it is the sole and rightful owner of any such Claims.

3. Acknowledgments. The Parties acknowledge and agree that (i) the consideration for this Release is contractual and not a mere recital, (ii) neither this Release, nor any part thereof, shall be used or construed as an admission of liability on the part of any Party, and this Release shall not be admissible in any proceeding or cause of action as an admission of liability by any Party (except with respect to the duties and obligations herein provided), (iii) this Release is knowing and voluntary, (iv) the Parties have consulted with such attorneys, accountants, financial advisors and other advisors as they have deemed necessary and appropriate in connection with the negotiation and execution of this Release, and (v) the releases and waivers contained herein are binding upon the Parties and their respective successors, assigns and legal representatives, and all persons and entities claiming by, through or under the respective Parties, and shall inure to the benefit of the respective Parties.

4. Governing Law. This Release shall be governed by, subject to, and construed and enforced in accordance with, the laws of the State of New York. The Parties hereby consent and agree that the Supreme Court in Albany County, New York shall have jurisdiction to hear and determine any claims and disputes between or among the Parties hereto. Each of the Parties hereto submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and waives any objection based upon lack of personal jurisdiction, improper venue or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court.

5. Sufficient Consideration. Each of the District, Erie and Niagara acknowledges and agrees that adequate and sufficient consideration exists for its execution of this Release.

6. Counterparts. This Release may be executed in a number of counterparts, and by the Parties on separate counterparts, each of which shall be deemed an original for all purposes, but all of which together shall constitute one and the same instrument.

7. ENTIRE AGREEMENT. THIS RELEASE AND THE OTHER DOCUMENTS REFERRED TO HEREIN CONTAIN THE ENTIRE RELEASE BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF. NO ORAL UNDERSTANDINGS, STATEMENTS, PROMISES OR INDUCEMENTS CONTRARY TO THE TERMS OF THIS RELEASE EXIST.

THIS RELEASE CANNOT BE CHANGED OR TERMINATED ORALLY.

IN WITNESS WHEREOF, the Parties have executed this Mutual Release this 1st day of July, 2003.

**HUDSON RIVER BLACK RIVER
REGULATING DISTRICT**

By: _____
Name: _____
Title: _____

NIAGARA MOHAWK POWER CORPORATION

By: _____
Name: _____
Title: _____

**ERIE BOULEVARD HYDROPOWER, L.P.
By its General Partner
ORION POWER NEW YORK G.P., INC.**

By: _____
Name: _____
Title: _____

EXHIBIT "B"

STILLWATER LETTER AGREEMENT

Dated as of July 1, 2003

Erie Boulevard Hydropower, L.P.
440 Ninth Avenue, 5th Floor
New York, New York 10001

Re: Hudson River Black River Regulating District
Stillwater Reservoir

Gentlemen:

Reference is made to that certain reservoir operating agreement (the "**Reservoir Operating Agreement**") between Erie Boulevard Hydropower, L.P. ("**Erie**") and the Hudson River-Black River Regulating District (the "**District**") dated of even date herewith. Capitalized terms used herein but not defined shall have the meaning set forth in the Reservoir Operating Agreement.

To the extent permitted by the Act and any applicable state or federal law, taking into account the District's public purposes, the District and Erie shall use their best efforts to cooperate in the operation of the Stillwater Reservoir ("**Stillwater**") for the District's public purposes as provided under the Act, which includes, but is not limited to, regulating the flow of streams when required by the public welfare, including the public health and safety, and to maximize Erie's hydroelectric energy generation at the hydroelectric energy generation plants and facilities owned by Erie as of the date hereof and located downstream of Stillwater, as such facilities are modified from time to time (the "**Stillwater Facilities**"). Said cooperation by the District and Erie may include, without limitation:

(i) Scheduling and causing Authorized Representatives to attend regular meetings and/or conference calls between the parties to use their best efforts to plan and coordinate short-term (up to seven (7) day) operation of Stillwater for the District's public purposes as provided under the Act and to maximize Erie's hydroelectric energy generation by the Stillwater Facilities;

(ii) Scheduling releases from Stillwater for the District's public purposes as provided under the Act and to account for energy market conditions and maintenance of the Stillwater Facilities, thereby maximizing hydroelectric energy generation by the Stillwater Facilities;

(iii) Discussing changes to the District operation plans or procedures affecting Stillwater prior to implementation of such changes with an intent to operate Stillwater for the District's public purposes as provided under the Act and to maximize Erie's hydroelectric energy generation by the Stillwater Facilities;

(iv) Mutually determining if additional stream flow gauges are appropriate or necessary at Stillwater and, if so, cooperating in the acquisition and the installation thereof, including, equitable pro-ratio of costs thereof between the parties hereto;

(v) Working jointly to coordinate, collect and share snow survey information on an immediate basis in an effort to increase accuracy and reduce the cost of said collection;

(vi) Utilizing full storage capacity at Stillwater (100% storage capacity for Stillwater is defined as pond at the top of flashboards, USGS elevation of 1670.30') for the District's public purposes as provided under the Act and to maximize Erie's hydroelectric energy generation by the Stillwater Facilities;

(vii) Scheduling releases from Stillwater for the District's public purposes as provided under the Act and to minimize the amount of water spilled at the Stillwater Facilities;

(viii) Utilizing the historic operating guide curve for the District's public purposes as provided under the Act and to maximize Erie's hydroelectric energy generation by the Stillwater Facilities;

(ix) Working cooperatively with Erie on a study to reevaluate the historic operating guide curve at Stillwater; and

(x) In the event that the hydro generating facility at Stillwater is unable to generate energy due to water flow, and qualified personnel from the District are unavailable on-site within a reasonable amount of time to open gates in response thereto, allowing an Authorized Representative of Erie, under the supervision (by telephone or otherwise) of the District's chief engineer or his designee, to enter upon and open discharge gate(s) at Stillwater in order to maintain minimum flow at High Falls and pond levels on the Beaver River.

The District and Erie agree that this Letter Agreement solely represents a good faith effort to set forth covenants of cooperation with respect to the operation of Stillwater and the Stillwater Facilities and, except as otherwise provided herein, does not, in any way, subject the District to any liability, responsibility or obligation with respect to the District's operation of Stillwater.

Any dispute arising between the parties hereto as a result of this Letter Agreement shall be subject to the dispute resolution procedures set forth in Article VI of the Reservoir Operating Agreement (the **"Dispute Resolution Procedures"**). Notwithstanding any other term or condition set forth herein, except for an action for specific performance or an adjustment of the water fee in accordance with Section 5.2 of the Reservoir Operating Agreement (**"Adjustment of the Water Fee"**), the District shall, in no event, be liable to any Person, including, but not limited to Erie, or any other Person, for any and all claims, actions, demands, penalties, fines, liabilities, settlements, damages, costs or expenses (including, without limitation, attorneys' fees, consultant fees, investigations and laboratory fees, court costs and litigation expenses of whatever kind or nature known or unknown, contingent or otherwise) arising out of or in any way related to this Letter Agreement and the transaction contemplated hereby, including, but not limited to, any claims actions, demands, penalties, fines, liabilities, settlements, damages, costs or expenses (including, without limitation, attorneys' fees, consultant fees, investigations and laboratory fees, court costs and litigation expenses of whatever kind or nature known or unknown, contingent or otherwise) arising out of any change in the operation of Stillwater as a result hereof.

Erie and the District agree that the sole remedy under this Letter Agreement against either party hereto shall be (i) a determination of an Event of Non-Cooperation by Erie or a determination of an Event of Non-Cooperation by the District, as the case may be, or (ii) an action to compel specific performance. For the purposes of this Letter Agreement an **"Event of Non-Cooperation by the District"** as defined in the Regulatory Operating Agreement shall include any instance of failure by the District to cooperate with Erie under this Letter Agreement as determined in accordance with the Dispute Resolution Procedures and such instance of failure results in a reduction of hydroelectric energy generation at any one (1) Stillwater Facility with a loss of revenues at said Stillwater Facility in an amount of \$25,000 or more and an **"Event of Non-Cooperation by Erie"** as defined in the Regulatory Operating Agreement shall include any instance of failure by Erie to cooperate with the District under this Letter Agreement as determined in accordance with the Dispute Resolution Procedures. Said non-cooperation by the District or Erie shall be limited to the District's or Erie's, as the case may be, failure to observe, and perform the terms, conditions and covenants of this Letter Agreement.

As set forth in Section 5.2 of the Reservoir Operating Agreement, Erie is entitled to an Adjustment of the Water Fee at any time during the term of the Reservoir Operating Agreement upon the occurrence, within any three (3) year period, of three (3) separate and consecutive determinations of an Event of Non-Cooperation by the District under this Letter Agreement or the Reservoir Operating Agreement; provided that no Event of Non-Cooperation by Erie shall have been determined to have occurred during the same calendar year period as the respective Event of Non-Cooperation by the District.

For example, if, by 2012, a determination of an Event of Non-Cooperation by the District has been made in 2004, twice in 2006, 2007, and twice in 2011, then Erie shall be entitled to an Adjustment of the Water Fee after the third determination of an Event of Non-Cooperation by the District in 2006 and, again, since there are already two (2) separate and consecutive determinations of an Event of Non-Cooperation by the District in 2011, in 2013, if there is a determination of an Event of Non-Cooperation by the District in 2013.

In addition, using the above referenced scenario, although there are three (3) separate and consecutive determinations of an Event of Non-Cooperation by the District in the period 2007-2011, Erie is not entitled to an Adjustment of the Water Fee in 2011 because the three (3) separate and consecutive determinations of an Event of Non-Cooperation by the District did not occur within any three (3) year period. Furthermore, although there are three (3) separate and consecutive determinations of an Event of Non-Cooperation by the District with a three (3) year period from 2006-2007, Erie is also not entitled to an Adjustment of the Water Fee in 2007 because the two (2) determinations of an Event of Non-Cooperation by the District in 2006 have already been "used" to effect the first Adjustment in the Water Fee in 2006.

Finally, using the same scenario above, if there had been a determination of an Event of Non-Cooperation by Erie in 2005, then Erie would have been entitled to an Adjustment of Water Fee after the third (3) separate and consecutive determination of an Event of Non-Cooperation by the District in 2007 - not 2006 - as the determination of an Event of Non-Cooperation by Erie in 2005 bars "use" of the determination of an Event of Non-Cooperation by the District in 2004 as said determination is no longer a consecutive determination with those made in 2006.

This Letter Agreement shall be governed by and interpreted in accordance with the internal laws of the State of New York without regard to conflicts of laws principles. Without limiting the terms and conditions of this Letter Agreement, including but not limited to, those terms and conditions regarding the Dispute Resolution Procedures, the parties hereby consent and agree that the Supreme Court in Albany County, New York shall have jurisdiction to hear and determine any claims and disputes between or among the parties hereto. Each of the parties hereto submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and waives any objection based upon lack of personal jurisdiction, improper venue or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court.

This Letter Agreement shall terminate upon the early termination or expiration of the Reservoir Operating Agreement.

EXHIBIT "C"

DEC LETTER

New York State Department of Environmental Conservation
Division of Legal Affairs, 14th Floor
625 Broadway, Albany, New York 12233-1500
Phone: (518) 402-9184 • FAX: (518) 402-9018
Website: www.dec.state.ny.us



October 28, 2002

Jerry L. Sabattis
Hydro Licensing Coordinator
Reliant Energy
225 Greenfield Parkway
Suite 201
Liverpool, New York 13088

Timothy D. Foley
General Counsel
Hudson River Black River Regulating District
350 Northern Boulevard
Albany, New York 12204

Re: Hudson Sacandaga River Settlement Offer; Interpretation of ECL §15-2133

Dear Messrs. Sabattis and Foley:

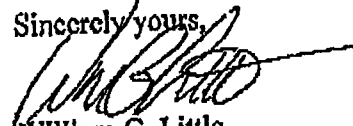
This responds to the request for concurrence in an interpretation of §15-2133 of the Environmental Conservation Law ("ECL"), submitted by Mr. Sabattis on July 25, 2002 under the joint auspices of Reliant Energy and the Hudson River Black River Regulating District. This correspondence memorializes my earlier conversation with you indicating the Department's concurrence with your reading of ECL §15-2133 for the purpose of continued operation and management of the Great Sacandaga Lake Reservoir.

ECL §15-2133 provides for reservoir releases to address flooding or other emergency situations when the waters of the reservoir rise above the maximum or "high" flow line. The operational provisions for management of releases set forth in the Settlement Agreement will allow the Hudson River Black River Regulating District to accomplish the release of waters from the reservoir in such flood or emergency situations in a way that will not jeopardize the meaning or intent of ECL §15-2133. That section must be harmonized with other provisions of Title 21 of ECL Article 15 providing for the "regulation of the flow of streams" (§15-2103) and, as you observed, the District's obligation to maintain water quality (among other things) in the Hudson

River. The Department interprets the incremental schedule for releases to return the reservoir level to the high flow line provided in the Settlement Agreement as being consistent with the requirement in §15-2133 to immediately open the flood gates to restore the reservoir to the high flow elevation with "the least practicable delay." We therefore concur in your interpretation.

Please advise me if there are any further questions in this matter.

Sincerely yours,


William G. Little
Associate Attorney

cc.: Tom Hall, NYSDEC Region 5 PA
Mark Woythal, NYSDEC, DFWMR

SUPREME COURT
STATE OF NEW YORK COUNTY OF ALBANY

HUDSON RIVER – BLACK RIVER
REGULATING DISTRICT,

Plaintiff,

- against -

ERIE BOULEVARD HYDROPOWER, L.P. and
NIAGARA MOHAWK POWER CORPORATION,

Defendants.

**STIPULATION OF
DISCONTINUANCE**

Index No.

IT IS HERBY STIPULATED AND AGREED, by and between the undersigned, the attorneys of record for all parties to the above entitled action, that whereas no party hereto is an infant or incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of the action, the above entitled action and all claims and counterclaims contained therein be, and the same hereby is discontinued, with prejudice, and without costs or attorneys fees to any party as against any other.

This Stipulation may be filed without further notice with the Clerk of the Court.

Dated: September __, 2003

Dated: September __, 2003

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