

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: Willard W. Loveless
Name: Willard W. Loveless
Title: Executive Director - Officers & Management

NIAGARA MOHAWK POWER CORPORATION

By: Michael F. Hynes
Name: Michael F. Hynes
Title: Vice President - Business Services - Capital Reg.

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

By: Joseph J. Wagner
Name: JOSEPH J. WAGNER
Title: VICE-PRESIDENT - EASTERN OPERATIONS