



## Hudson River - Black River Regulating District

**KATHY HOCHUL**  
Governor

**MARK M. FINKLE**  
Chairman

**JOHN C. CALLAGHAN**  
Executive Director

November 30, 2022

Mr. John Spain, Regional Engineer  
Federal Energy Regulatory Commission  
19 West 34<sup>th</sup> Street  
Suite 400  
New York, New York 10001

Re: Report of Dispute – P-2318/P-12252  
March 27, 2000 Offer of Settlement, Paragraph 2.5  
FERC License Form L-3 Terms and Conditions, Art 5 & Art. 13

Regional Engineer Spain,

The Great Sacandaga Lake Project (P-12252) operated by the Hudson River – Black River Regulating District (“Regulating District”) and the powerhouse and generating facilities at the Conklingville Dam currently licensed to Erie Boulevard Hydropower LP (“Erie”) as the E. J. West Project (P-2318) form a complete unit of development in New York’s Fulton and Saratoga Counties. A dispute has arisen regarding Erie’s obligation to pay reasonable compensation for use of Regulating District assets; including property rights or parts thereof. Counsel for Erie contends that continued payment for use of the Regulating District’s property rights would be duplicative to the headwater benefit assessment Erie pays pursuant to section 10(f) of the federal power act<sup>1</sup>. The Regulating District disagrees.

Erie does not own all of the head necessary to operate the E.J. West project (P-2318). The Regulating District owns fifty-six (56) feet of the seventy-one (71) feet of head supplying that project. Despite having compensated the Regulating District for use of the fifty-six (56) feet of head continuously without objection or challenge since acquiring the project, Erie has indicated its intention to cease doing so at the conclusion of the existing agreement on December 31, 2022<sup>2</sup>. As far back as 1927, Erie’s predecessors recognized that they did not control all of the project components necessary for operation. In 1927 Erie’s predecessor interest entered into an agreement with the Regulating District allowing the power company to connect to the outlet of the Conklingville Dam for the purpose of producing power from the power company’s fifteen (15) feet of head and the Regulating District’s additional fifty-six (56) feet of head<sup>3</sup>. This, and subsequent operating agreements<sup>4</sup>, secured for the Regulating District the full value of the power

<sup>1</sup> October 13, 2022 Letter from Glick to Leslie

<sup>2</sup> November 21, 2022 Email from Glick to Leslie

<sup>3</sup> 1927 - 11 14 1927 NY Power & Light ROA Conklingville

<sup>4</sup> 1939 - 01 05 1939 NY Power & Light ROA Conklingville  
1949 - 09 21 1949 NY Power & Light ROA Conklingville

thus produced by said additional head. In exchange, Erie's predecessors secured the project elements necessary to operate the E.J. West hydroelectric plant (P-2318). The intent of the parties was then, and is now, that the power company would pay the Regulating District for use of this property interest and for the timing of the release of the flow impounded by the Regulating District's dam at Conklingville. Absent an extension of this agreement, Erie does not control, and thus FERC is unable to bring under Erie's license, the remaining components of the unit of development. Likewise, absent an extension of this agreement, nothing in the Regulating District's license or the Offer of Settlement compels the Regulating District to make releases through E.J. West.

Through the series of reservoir operating agreements in place from 1927 through 2002, Erie's predecessors paid the Regulating District for use of the Regulating District's property right and the timing of the release of water at Conklingville; that final component necessary for Project 2318 (E.J. West) to operate. Nonetheless, at the E.J. West project's most recent license renewal, FERC noted that Erie, the then new owner, failed to permanently secure all project elements under license. Due to a NYS Constitutional prohibition preventing Erie's outright purchase of the state property interest necessary to complete the E.J. West project and a 1992 amendment to section 21 of the Federal Power Act (FPA) prohibiting the use of eminent domain to acquire state park lands for hydropower purposes, FERC issued project license 12252 to the Regulating District in order that all project elements be brought under license. Erie and the Regulating District entered the current reservoir operating agreement in July, 2003 (amended in 2006), through which Erie pays the Regulating District for use of this critical project element and for the timing of the release of the flow impounded by the Regulating District's dam.

Erie's imminent abandonment of the arrangement through which it secures use of the Regulating District's property interest will cause Erie to be in violation of its FERC license. Erie's FERC license for E.J. West, issued September 25, 2002 and as modified on February 5, 2003, demonstrates FERC's commitment to support the contractual relationship linking the two licensees creating the single unit of development (E.J. West at Conklingville). Subsection "E" of Erie's license provides that "[T]his license is subject to the articles set forth in Form L-3, (October 1975), entitled "Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters of the United States," .... Article 5 thereof requires in part that "The Licensee...shall, during the period of the license, retain possession of all project property covered by the license as issued...including...water rights..." Likewise, the Regulating District's license, also issued on September 25, 2002, and subject to those same license conditions, contemplates that Erie will have to compensate the Regulating District for use of that project element. See condition Article 13 which provides in part that "The Licensee shall receive reasonable compensation for use of its reservoir or other project properties or parts thereof for such purposes, to include at least full reimbursement for any damages or expenses which the joint use causes the Licensee to incur". In essence, neither licensee alone controls all the necessary project elements. Clearly, Erie's obligation to compensate for use of the Regulating District's property interest, is separate and distinct from Erie's obligation under its own license's Article 11 to reimburse the Regulating District for an equitable portion of the cost to construct and maintain the headwater improvement. Yet Erie continues to argue that one is duplicative of the other.

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1971 - 12 28 1971 Nimo ROA Conklingville

1980 - 06 17 1980 Nimo ROA Conklingville

2003 - 07 01 2003 ROA with Erie Blvd Hydropower at Conklingville

2003 - 07 01 2003 ROA With Erie Exhibit A to 07 01 2003 ROA - Mutual Release

2003 - 07 01 2003 ROA With Erie Exhibit B to 07 01 2003 ROA - Stillwater Reservoir Letter Agreement

2006 - 05 19 2006 First Amendment to ROA

2021 - 06 16 2021 Second Amendment to ROA

2022 - 06 29 2022 Third Amendment to ROA

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The Offer of Settlement similarly demonstrates FERC's commitment to support the contractual relationship. The Regulating District filed its original FERC license application in the context of an Offer of Settlement dated March 27, 2000. Tables established in the Offer of Settlement, which illustrate the level curves incorporated into the license, require the Regulating District to achieve several objectives including: minimizing energy losses to affected hydroelectric projects by the aggressive use of storage (see License Article 402(a)). Erie has cited this language to suggest it must be permitted to generate revenue even after it ceases compensating the Regulating District for use of the Regulating District's property interest. However, Article 402 subsection (j) only requires the Regulating District to make every reasonable attempt to limit releases to not exceed target maximum flows in the Hudson River below its confluence with the Sacandaga River and to limit releases from Great Sacandaga Lake below E.J. West. The Regulating District maintains that such target flows are measured below E.J. West specifically so that the Regulating District is not compelled, in the Offer of Settlement, or in the FERC license, to make prescribed releases through Erie's E. J. West hydroelectric plant absent an agreement through which Erie pays reasonable compensation for Erie's use of the Regulating District's property interest; namely the fifty-six (56) feet of head that Erie is not entitled to absent the agreement.

Section 2.5 of the Offer of Settlement establishes a dispute resolution procedure through which licensees shall report such disputes to FERC. As such, if Erie and the Regulating District have not resolved the disputes enumerated herein, the Regulating District will thereafter petition the Commission for assistance resolving the dispute. We suspect that once the Regulating District commences fulfilling the flow requirements of the license, beginning January 1, 2023, by making prescribed releases through its outlets rather than through E.J. West Erie may also seek FERC's assistance.

The Regulating District is interested in continuing its partnership with Erie through the end of the current license term (September 2042) and beyond. The current reservoir operating agreement, representing the parties' negotiated resolution of the reasonable return due for Erie's use of the Regulating District's water rights, expires on December 31, 2022. Negotiations for a new agreement commenced June 23, 2020. In anticipation of the expiration of the current reservoir operating agreement, and in recognition of the public authority's responsibility to secure fair market value through this revenue contract, the Regulating District commissioned an appraisal to determine the value of the water rights. Nearly two and half years later, Erie has yet to challenge the Regulating District's appraisal or to offer their own appraisal valuing the property rights provided by the Regulating District. While this correspondence does not constitute a formal petition to FERC under Section 2.5 of the Offer of Settlement, the Regulating District feels obligated to inform FERC of the status of these negotiations, the possibility that generation through E. J. West may cease on January 1, 2023, and that a formal petition to FERC may be forthcoming if the matter is not resolved by the end of the year.

Sincerely,



John C. Callaghan  
Executive Director

October 13, 2022

**VIA ELECTRONIC MAIL**

Robert Leslie  
General Counsel  
Hudson River – Black River Regulating District  
575 Broadway – Third Floor  
Albany, NY 12207

Dear Mr. Leslie:

I am writing in response to your recent e-mail communications to Erie Boulevard Hydropower, LP (“Erie”) regarding the operating agreement between Erie and the Hudson River – Black River Regulating District (“District”). The intent of the parties’ current Reservoir Operating Agreement (“Operating Agreement”) is to cooperate in the operation of the District’s Great Sacandaga Lake to maximize Erie’s generation at the E.J. West Hydropower Project (“E.J. West”). The Operating Agreement expires on December 31, 2022.

For several years, Erie and the District have been engaged in discussions regarding the value of the Great Sacandaga Lake’s regulation of flows to E.J. West. The Operating Agreement includes a compensation structure to capture the benefits of the headwater to E.J. West operations. Your recent correspondence characterized Erie’s compensation to the District for these benefits as “water rights payments” and the District recently provided an appraisal for what the District believes is the fair market value of the water releases.

As we have communicated to you, Erie believes that its payments to the District for headwater benefits assessed by the Federal Energy Regulatory Commission (“FERC”) under Section 10(f) of the Federal Power Act (“FPA”) already incorporates the value of—and appropriately compensates the District for—the water utilized by Erie for generation at E.J. West. Accordingly, Erie maintains that the separate charge the District seeks to assess for the value of the water to generation at E.J. West is duplicative and inconsistent with federal law.

**I. Erie Boulevard Pays For the District’s Upstream Facilities Through Its FERC-Assessed Headwater Benefits Payments.**

Prior to the FERC licensing of the District’s Conklingville Dam and Great Sacandaga Lake in 2002,<sup>1</sup> Erie and its predecessors compensated the District for the use and benefits provided by the District’s facilities through the payment mechanism set forth in the parties’ Operating Agreement. The Operating Agreement was executed in 1927 and renegotiated in 1980 before the parties entered into the current version in 2003, which they amended in 2006. The

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<sup>1</sup> *Hudson River-Black River Regulating District*, 100 FERC ¶ 61,319 (2002) (order issuing an original license to the District for the Conklingville Dam and Great Sacandaga Lake as the Great Sacandaga Lake Project, No. 12552) (Great Sacandaga Lake License).



parties' comprehensive licensing Settlement Agreement, executed in 2000, expressly carved out the District's assessment of all use by and benefits to Erie for Great Sacandaga Lake releases.<sup>2</sup> Rather, the parties anticipated that the District would invoice downstream water users through state procedures outside of the FERC licensing proceedings.<sup>3</sup> The Settlement Agreement does not treat Erie's reimbursement for water and benefits as separate issues, as the District maintains.

Indeed, the Settlement Agreement includes "charges to Erie for the E.J. West Project's use of head and water" as part of Erie's overall reimbursement to the District for "operations and maintenance expenses associated with [the District's] operation of the Conklingville Dam and Great Sacandaga Lake."<sup>4</sup> FERC approved the Settlement Agreement,<sup>5</sup> but denied the District's request for clarification that FERC's approval of the Settlement Agreement encompassed approval of the District's assessment procedures—which FERC characterized as headwater benefits and did not distinguish water use.<sup>6</sup> FERC invited the parties to submit the assessment for FERC approval,<sup>7</sup> but the parties did not submit the then-effective Operating Agreement (1980) nor the subsequently negotiated Operating Agreement (2003) for FERC approval of the assessment contemplated therein.

FERC subsequently initiated a headwater benefits determination to compute the value of the District's releases to the projects downstream of the District's facilities. FERC issued orders in 2012 determining those headwater benefits, from 2002 (when the District's facilities were licensed) onward, pursuant to Section 10(f) of the FPA.<sup>8</sup> Erie has been paying the District for its releases from Great Sacandaga Lake pursuant to FERC's assessment since that time.

Like the Settlement Agreement, the FERC licenses themselves also do not treat Erie's reimbursement for water and benefits as separate issues. The District's assertion that a review of Standard Articles 11 and 13 of the licenses will "put the issue to bed" is erroneous. Standard Article 11 simply puts the licensees on notice of the obligation to pay headwater benefits under FPA Section 10(f) and FERC's regulations thereunder. Standard Article 13 allows for third party uses of licensed project works as may be ordered by FERC; it is not at all relevant to a licensee's own use of facilities such as the licensed dam and reservoir—which as you point out—here are part of the same unit of development. Moreover, Standard Article 13 is not at all

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<sup>2</sup> Upper Hudson / Sacandaga River Offer of Settlement § 1.6, Project Nos. 2318-011, *et al.* (filed Apr. 12, 2000) ("Settlement Agreement") ("the potential for reassessment and amendment of the water lease costs charged to Erie by the Regulating District for the E.J. West Project has not been addressed in this Settlement Offer.").

<sup>3</sup> Settlement Agreement § 8.4.

<sup>4</sup> *Id.*

<sup>5</sup> *Erie Boulevard Hydropower, L.P., et al.*, 100 FERC ¶ 61,321 (2002).

<sup>6</sup> *Erie Boulevard Hydropower, L.P., et al.*, 102 FERC ¶ 61,133 at PP 13-14 (2003).

<sup>7</sup> *Id.* at P 14.

<sup>8</sup> *See Hudson River-Black River Regulating District, et al.*, 140 FERC ¶ 62,089 (order determining headwater benefits in the Hudson River Basin), *reh'g denied*, 141 FERC ¶ 61,227 (2012).

applicable to a licensee's procurement of water rights under state law. Thus, the licenses themselves do not support the District's assertion that Erie's payment to the District for the use of water rights and water at E.J. West are separate issues.

## **II. The District Is Not Authorized Under State or Federal Law to Assess a Fee for Water.**

In your most recent correspondence dated September 21, 2022, you refer to the District's benefits assessments under the Operating Agreement as payments for "water rights." Erie disagrees that it is obligated to pay the District for water in addition to the FERC-mandated payment for headwater benefits. The District has not provided any legal support for its position that it is authorized under state law to assess a fee for water. The only state law referenced in the Operating Agreement is Title 21 of Article 15 of the New York Environmental Conservation Law, 15 ECL § 2121, *et seq.* FERC has made clear, however, that the District's assessment of fees to Erie and other downstream hydropower project owners under 15 ECL § 2121 *et seq.* is a duplicative and impermissible assessment for headwater benefits.<sup>9</sup> The D.C. Circuit confirmed that the District's assessment of fees for any purpose pursuant to 15 ECL §§ 2121, *et al.* is preempted by the FPA.<sup>10</sup>

## **III. The District Cannot Divert Its Releases if Erie Does Not Agree to Execute a New Operating Agreement.**

The assessment of fees contemplated by the Operating Agreement has been superseded by FERC's subsequent assessment of headwater benefits. Since there is no independent legal basis upon which the District can charge for water, the parties are not legally required to renew the Operating Agreement or to enter into a new agreement that authorizes the District's assessment of fees to Erie. Moreover, the District cannot divert its releases around E.J. West, as it has threatened to do if the parties do not renew the Operating Agreement, as doing so would contravene the Settlement Agreement and the District's FERC license. Such diversion would also be inconsistent with the assessment and payment of FERC-authorized headwater benefits charges relating to E.J. West.

As you noted, the Settlement Agreement—and the District's FERC license incorporating the Settlement Agreement—require the District to operate the Conklingville Dam and Great Sacandaga Lake with specific objectives: to maintain water quality and fish habitat, minimize energy losses, enhance whitewater recreation on the Sacandaga River, and provide base flows in the Sacandaga River, among other purposes.<sup>11</sup> FERC approved headwater benefits charges are premised on the District's compliance with such obligations. When releasing flows from the Great Sacandaga Lake, the District is required to ensure that its releases allow downstream

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<sup>9</sup> See *Hudson River-Black River Regulating District, et al.*, 140 FERC ¶ 62,089 at PP 5-6 (noting FERC's conclusion that the District's assessments of downstream hydropower projects for Great Sacandaga Lake releases pursuant to New York's Environmental Conservation Law "were clearly assessments for headwater benefits.").

<sup>10</sup> *Albany Engineering Corp. v. FERC*, 548 F.3d 1071 (D.C. Cir. 2008).

<sup>11</sup> Settlement Agreement § 3; Great Sacandaga Lake License at Art. 402.

licensees to meet their license requirements—including for the licensee of Stewarts Bridge to provide a base flow and whitewater flows, a minimum average daily flow below the confluence of the Hudson and Sacandaga Rivers, and a base flow below Feeder Dam Project.<sup>12</sup> Thus, the diversion of flows contrary to these purposes would contradict the agreement of the parties to the Settlement Agreement, and be inconsistent with the District’s FERC license, which incorporates the Settlement Agreement and is based on the fundamental premise that releases from the District’s dam be used for power generation at E.J. West. In addition, diverting water to purposely avoid renewable energy generation would be completely contrary the clean energy goals mandated by the State of New York.

**IV. Erie Agrees with the District that Further Evaluation of the Value of a New Operating Agreement is Warranted.**

Notwithstanding Erie’s position that its headwater benefits payments cover all benefits provided by the District’s facilities, including for water releases, Erie is continuing to evaluate whether there is additional value in entering into a new form of operating agreement with the District, which value does not relate to “water rights” covered by the headwaters benefit charges Erie already pays.

Erie appreciates the District’s attention to this matter. Please contact me with any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read 'JG', with a long horizontal flourish extending to the right.

Justin Glick  
Director, Senior Legal Counsel  
Brookfield Renewable U.S.

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<sup>12</sup> Settlement Agreement § 3; Great Sacandaga Lake License at Art. 402.

**From:** [Glick, Justin](#)  
**To:** [Robert P. Leslie](#); [kmcauliffe@barclaydamon.com](mailto:kmcauliffe@barclaydamon.com)  
**Cc:** [John Callaghan](#); [Glick, Justin](#)  
**Subject:** RE: Expiration of Reservoir Operating Agreement  
**Date:** Monday, November 21, 2022 3:37:54 PM

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Rob –

Thank you for your proposal below. At this time, we do not wish to extend the existing Operating Agreement beyond its pending expiration. As we laid out in our last letter of October 13, 2022, we are already compensating the District for the value of the water and the cost of maintaining the Conklingville Dam through our payment of headwater benefits. If we were to enter into a new operating agreement with the District, it would need to be based on some other value to be derived by EJ West.

That value, as we see it, derives from the ability to time releases through the EJ West facility. We would be open to considering a new agreement that would provide us with such scheduling ability in exchange for a reasonable fee. However, the appraisal of the assets commissioned by the District would not be relevant in determining what compensation should be provided under any new agreement, as that value is already included in Erie's headwater benefits payments. Our initial internal analysis points toward a valuation of the ability to time releases at \$80-100k / year.

Separately, we would be interested in understanding the nature of the dispute you intend to present to FERC. If you could share a copy of the letter it would be appreciated.

Please let us know if it would be helpful to discuss.

Regards,

Justin

**Justin Glick**  
Director, Senior Legal Counsel

**Brookfield Renewable**  
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**From:** Robert P. Leslie <RLeslie@hrbrd.ny.gov>  
**Sent:** Wednesday, November 16, 2022 8:21 AM  
**To:** Glick, Justin <Justin.Glick@brookfieldrenewable.com>; [kmcauliffe@barclaydamon.com](mailto:kmcauliffe@barclaydamon.com)  
**Cc:** John Callaghan <JCallaghan@hrbrd.ny.gov>  
**Subject:** Expiration of Reservoir Operating Agreement

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Justin & Kevin,

Tomorrow (Thursday, November 17<sup>th</sup>) will mark forty-five (45) days before the expiration of the reservoir operating agreement between Erie Boulevard Hydropower LP and the Regulating District. We remind Erie that, to date, Erie has failed to provide an appraisal establishing the value of the Regulating District assets utilized to generate at E.J. West. Neither has Erie provided any comment challenging the Regulating District's valuation of such assets. As such, we thought it timely to loop back with you.

Should Erie ultimately reply to the Regulating District's 10/28/22 offer, indicating that it wishes to extend the expiring agreement in the interest of negotiating a new agreement in good faith, the Executive Director has, at the Regulating District Board's November 9, 2022 regular meeting, sought authorization to extend the existing agreement for an additional six months to June 30, 2023. The Board voted unanimously to extend the agreement to allow additional time for good faith negotiations.

Second, we have prepared a letter to the Federal Energy Regulatory Commission (FERC). As provided in the license for Conklingville, and the Offer of Settlement, parties shall report to FERC any dispute and, if the parties have not resolved the dispute through informal measures, the licensee shall petition FERC for assistance resolving said dispute. Absent an extension and resumption of good faith negotiations, we contemplate asking the Regulating District Board, at its January 10, 2023 meeting, to authorize staff to file such a petition. In light of the forty-five (45) day notice requirement, the Regulating District anticipates filing the letter drafted with FERC no later than Monday, November 28<sup>th</sup>.

The Regulating District's offices are closed Thursday, November 24<sup>th</sup> and Friday, November 25<sup>th</sup> for Thanksgiving. Given the schedule described above, we'd appreciate a reply no later than close of business on Wednesday, November 23<sup>rd</sup>. We're also happy to participate in a call to discuss if you think that would be helpful.

**Robert Leslie**

General Counsel

**Hudson River - Black River Regulating District**

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# Agreement

BETWEEN

NEW YORK POWER AND LIGHT CORPORATION

AND

HUDSON RIVER REGULATING DISTRICT

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Dated: November 14, 1927

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**This Agreement.** made this 14th day of November, 1927, between NEW YORK POWER AND LIGHT CORPORATION, a domestic corporation organized and existing under the laws of the State of New York, with a principal place of business at No. 126 State Street, in the City of Albany, Albany County, New York, party of the first part, hereinafter called POWER COMPANY, and HUDSON RIVER REGULATING DISTRICT, a public corporation created pursuant to the provisions of Article 7-a of the Conservation Law of the State of New York, party of the second part, hereinafter called DISTRICT.

WITNESSETH:

WHEREAS, DISTRICT was organized to construct, maintain and operate reservoirs within the Hudson River Regulating District on the Hudson River and its tributaries, including the Sacandaga River, and has determined to construct a regulating reservoir on the said Sacandaga River and to impound the waters by a dam at or near Conklingville, Saratoga County, New York, and for the purposes thereof has purchased certain real estate from POWER COMPANY, and

WHEREAS, the POWER COMPANY has reserved the right, now owned by POWER COMPANY, to use for its own purposes fifteen (15) feet of head existing on the said Sacandaga River within the bounds of part of the property so conveyed, and the value of the use of said head has not been included in determining the price paid by DISTRICT for said real estate, and

WHEREAS, POWER COMPANY has been assessed for the said fifteen (15) feet of head in accordance with the Apportionment of Costs as issued by the said DISTRICT January 30, 1925, and approved by the Water Control Commission February 19, 1925.

NOW, THEREFORE, the parties hereto mutually covenant and agree as follows:



POWER COMPANY AGREES:

1. To construct, maintain and operate at its sole cost a power house on its own land below said dam, in accordance with designs, estimates and contracts as approved by the Engineer of the DISTRICT, capable of using not only POWER COMPANY'S said 15 feet of head, but also the additional head to be created by DISTRICT'S said dam, and to so complete said power house by the time DISTRICT completes said dam.

2. To pay DISTRICT, as hereinafter provided:

- (a) for furnishing the dam by which POWER COMPANY'S said 15 feet of head is developed, and
- (b) for the power produced from said plant by the use of DISTRICT'S said additional head.

DISTRICT AGREES:

1. To maintain and operate said dam, as by statute provided, when constructed as has been determined, and to permit POWER COMPANY to connect to the outlet of said dam the necessary head works, flume, tunnel, pipe line or intake of said plant so that the water impounded by said dam may be taken directly (when, as and if released by the DISTRICT for the regulation of the flow of the river) into POWER COMPANY'S said plant for the purpose of producing therein electric energy from POWER COMPANY'S said 15 feet of head, and DISTRICT'S said additional head, as an incident to the operation of Sacandaga Reservoir for stream regulation.

IT IS MUTUALLY AGREED:

1. That inasmuch as the total head at said dam will be 71 feet, of which POWER COMPANY owns the right to use 15 feet, and the estimated cost of said dam is \$1,500,000, the POWER COMPANY shall pay annually, as provided in its agreement 2-(a) above, 6% of 15/71sts of \$1,500,000, (i.e., \$19,014.08), together with 15/71sts of such expenditures as may be made from year to year by DISTRICT for operating and maintaining said dam, but not for capital purposes.

2. That the power produced in said plant by the use of DISTRICT's said additional head, shall be taken to be 56/71sts of the total power produced by said plant, determined as hereinafter specified.

3. That whenever and as DISTRICT releases water from said reservoir POWER COMPANY will utilize the water, to produce power in said plant to the extent that POWER COMPANY is not prevented from so doing by limitations of plant capacity or by accidents beyond its control. If at any time POWER COMPANY wastes, except as above, water which then could have been used to deliver power from said plants, the power which said wasted water could have produced shall be considered, for purposes of all computations of payments hereunder, actually to have been produced.

4. That this contract is intended to secure for DISTRICT the full value of the power thus produced by said additional head after providing for the cost of development and operation thereof. Because the value of said power is affected by the continuity and regularity with which it is available during the period of each industrial day throughout the year, and because variation in quantity and pressure of water from hour to hour and from day to day will result from the releasing of said water as DISTRICT may desire for stream regulation, the quantity of power produced by said plant will vary irregularly from hour to hour and from day to day, and therefore, the following method is agreed upon for determining the power produced by the use of the DISTRICT's said additional head:

- (a) the total capacity for each separate week day (excluding Sundays and legal holidays) shall be taken as 1/12th of the kilowatt hours generated from said plant between the hours of 7 A.M. and 7 P.M.
- (b) the average of the 10 lowest said week day capacities during a given month shall be taken as the total capacity of the plant for that month.
- (c) the average of the 12 said monthly capacities shall be taken as the annual capacity.

(d) the power produced by the use of DISTRICT's said additional head shall be taken as 56/71sts of said annual capacity.

5. That the value of said power produced by DISTRICT's said additional head is \$24.00 per year for each kilowatt of annual capacity determined as aforesaid.

6. That POWER COMPANY will pay to DISTRICT the amount so computed as the value of said power produced by the use of DISTRICT's said additional head after deducting costs (determined as hereinafter provided) incurred by POWER COMPANY for furnishing and operating, on behalf of the DISTRICT, plant and equipment to utilize DISTRICT's said additional head.

7. That the costs last aforesaid shall be taken as:

- (a) 12% of 56/71sts of the total cost of the power house project, including cost of lands and rights and construction resulting from the plans, estimates and contracts approved by the engineers of the DISTRICT, including construction overhead expenses, and
- (b) 56/71sts of expenditures made by POWER COMPANY in operating and maintaining said plant, including labor, maintenance, taxes, insurance and general expenses (but not depreciation) as defined in the uniform classification of accounts prescribed by the Public Service Commission of the State of New York.

8. That payments will be made by POWER COMPANY on or before the 15th day of each month of the total amounts accruing hereunder to the DISTRICT for the period of 12 months ended with the last preceding month, less the sum of all the payments previously made on account of that accrual.

9. That at the end of each ten year period of this contract, namely 1937, 1947, 1957 and 1967, either party to this contract may petition for a readjustment of the price to be paid for power, specified in paragraph 5 of mutual covenants, by

written notice to the other party of this Agreement, and that if the two parties to this Agreement cannot agree as to the necessity of an adjustment, or as to the adjustment itself, the matter will immediately be decided under the terms of the arbitration clause contained herein.

10. That in case of disagreement between the parties hereto as to any question arising under this Agreement, such question shall be submitted to arbitrators as herein provided. The POWER COMPANY shall choose one arbitrator and the DISTRICT shall choose one arbitrator. The persons so chosen shall appoint a third arbitrator to be associated with them. If either party shall fail to appoint an arbitrator within ten (10) days after written notice of the appointment of an arbitrator by the other party, then the arbitrator appointed shall determine the questions involved in the dispute as sole arbitrator. If the arbitrators chosen by the parties do not agree upon a third arbitrator, then upon application of either party, and upon ten (10) days notice in writing to the other party, such third arbitrator may be appointed by any Justice of the Supreme Court of the State of New York in the Fourth Judicial District. A decision concurred in by any two of the three arbitrators so appointed shall be binding and conclusive upon both of the parties hereto.

11. The DISTRICT shall have the right, upon giving POWER COMPANY two (2) years written notice, to terminate this contract and to acquire said 15 feet of head and the power house project, including lands and rights and construction resulting from the plans, estimates and contracts referred to in paragraph 7, sub-division (a), upon payment of just compensation therefor as provided by law and upon payment to POWER COMPANY of the amount invested by POWER COMPANY in its power plant and works constructed pursuant to this contract, and not theretofore amortized.

12. The DISTRICT shall have the right at all times to limit and control the amount of water used by the POWER COMPANY and, for that purpose, to enter upon the premises of the

POWER COMPANY and to operate the gates and/or valves controlling the flow of water to the power plant in such manner as in its uncontrolled discretion may seem necessary and expedient for the proper regulation of the flow of the stream.

13. Nothing in this contract shall be construed as in any way limiting the rights of the DISTRICT to release water impounded by the dam at whatsoever rate and whatsoever time the DISTRICT desires or as in any manner to interfere with the purpose for which the dam is built.

14. This Agreement to be binding and in full force between the parties hereto for a period of fifty (50) years from and after the date that water is first released from the completed dam. \*

15. This Agreement shall inure to the benefit of and bind the successors and assigns of each of the parties hereto as well as the parties themselves.

\* July 1930 was the first month that water was released on a regular basis. Small amounts were released from time to time in June.

IN WITNESS WHEREOF, the parties hereto have caused their respective corporate seals to be hereunto affixed and this Agreement to be signed in duplicate by their respective officers thereunto duly authorized, the day and year first above written.

NEW YORK POWER AND LIGHT CORPORATION

By *Wm. H. Ruffner*  
President.

Attest:

*C. D. Goodhead*  
Asst. Secretary.

HUDSON RIVER REGULATING DISTRICT

By *Wm. H. Sage*  
President of the Board.

Attest:

*Samuel C. [illegible]*  
Secretary.

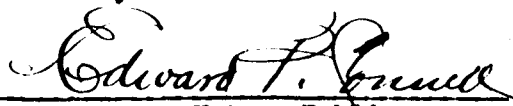
STATE OF NEW YORK     )  
                              : ss:  
County of ALBANY     )

On this 23rd day of December, 1927, before me, the subscriber, personally came CHARLES S. RUFFNER, to me known, who being by me duly sworn, did depose and say, that he resides in the town of Niskayuna, New York; that he is President of New York Power and Light Corporation, the Corporation described in and which executed the foregoing instrument; that he knows the corporate seal of said corporation; that the seal affixed to the foregoing instrument is such corporate seal; that the same was so affixed by authority of the Board of Directors of said corporation, and that he signed his own name thereto by like authority.

  
Notary Public

STATE OF NEW YORK     )  
                              : ss:  
County of ALBANY     )

On this 30th day of December, 1927, before me, the subscriber, personally appeared HENRY M. SAGE, to me known, who by me duly sworn did depose and say that he resides at Menands, New York; that he is President of The Board of Hudson River Regulating District, a public corporation organized and existing under the laws of the State of New York, the corporation described in and which executed the foregoing instrument; that he knows the corporate seal of said corporation; that the seal affixed to the foregoing instrument is such corporate seal; that the same was so affixed by authority of the said Board of Hudson River Regulating District; and that he signed his name thereto by like authority.

  
Notary Public  
Notary Public, Rensselaer County, N. Y.  
Certificate filed in Albany County, N. Y.





AGREEMENT

Between

NEW YORK POWER AND LIGHT CORPORATION

And

HUDSON RIVER REGULATING DISTRICT

Dated: January 5<sup>th</sup>, 1939

Re-Adjustment - Contract dated November 14, 1927

THIS AGREEMENT, made this 5<sup>th</sup> day of January, 1939,  
between NEW YORK POWER AND LIGHT CORPORATION, a corporation created, organized  
and existing under the Laws of the State of New York, with a principal place  
of business at No. 126 State Street, in the City and County of Albany, State  
of New York, party of the first part, hereinafter called Power Company, and  
HUDSON RIVER REGULATING DISTRICT, a public corporation created, organized  
and existing pursuant to the provisions of ARTICLE VII-A (now Article VII)  
of the Conservation Law of the State of New York, party of the second part,  
hereinafter called District.

W I T N E S S E T H:

WHEREAS, under date of November 14, 1927, Power Company and District  
entered into an Agreement, a copy of which is hereto annexed for reference  
thereto herein, which Agreement is hereinafter called Original Agreement; and

WHEREAS, the Regulating Reservoir known as the Sacandaga Reservoir,  
and the dam known as the Conklingville Dam to impound the waters in said  
Reservoir, referred to in said Original Agreement, have been duly constructed,  
and have been, and are being, operated for the public purposes set forth or  
referred to in the aforesaid Article VII of said Conservation Law; and

WHEREAS, since the completion of the construction of said Reservoir  
and said Dam in 1930 to the date hereof, the general method of releasing water  
from said Reservoir between the hours of 7 A. M. and 7 P. M. on days of such  
release, has demonstrated effective and proper operation and regulation of  
said Reservoir for the public purposes for which it was constructed; and

WHEREAS, release of water from said Reservoir during fourteen hours between 6 A. M. and 10 P. M. on days of release of water therefrom, in connection with the general manner of operating said Reservoir, would in the judgment of District further benefit and facilitate said public purposes; and

WHEREAS, Paragraph 9 on Page 4 of said Original Agreement provides for a re-adjustment of the price to be paid for power referred to in said Paragraph 9, at the times and in the manner therein mentioned; and

WHEREAS, negotiations have been had between Power Company and District for a re-adjustment, revision and modification of said Original Agreement, resulting in the terms, covenants and conditions hereinafter set forth:

NOW, THEREFORE, Power Company and District mutually covenant and agree that said Original Agreement be re-adjusted, revised and modified, as follows:

A. Paragraphs numbered 1 - 9, inclusive, contained in said Original Agreement, under the caption "It Is Mutually Agreed", on pages 2 - 4, inclusive, thereof, are hereby suspended and declared to be inoperative and not in force and effect as a part of this Agreement; and that said paragraphs shall so remain until such time as Power Company may exercise the option or election set forth or referred to in Paragraph G herein;

B. Paragraphs numbered 10 - 15, inclusive, contained in said Original Agreement, under the caption "It Is Mutually Agreed", on pages

5 and 6 thereof, are hereby declared to be, and constituted, a part of this Agreement the same as if said paragraphs were fully set forth at length herein;

C. That the provisions of said Original Agreement, other than those specifically referred to and provided for in paragraphs A and B herein, shall be, and are hereby constituted, a part of this Agreement the same as if said provisions were fully set forth at length herein, excepting wherein said provisions are specifically, generally, or by implication, re-adjusted, revised, changed or modified by the provisions of this Agreement;

D. That Power Company will pay to District for the purposes of subdivisions (a) and (b) contained in Paragraph 2 on Page 2 of said Original Agreement, under the caption "Power Company Agrees", the total and fixed sum of EIGHTY-THOUSAND (\$80,000.00) DOLLARS per year, each year during the term of this Agreement, and until such amount may be re-adjusted as provided in Paragraph E herein, or reversion is had to said Original Agreement as provided in Paragraph G herein; which said sum of \$80,000.00 shall be paid and be payable in equal monthly installments, each of which said monthly installments shall be paid on or before the 15th day of the month succeeding that for which said installment is due; that said sum of \$80,000.00 shall not be reduced by any credits or allowances of any name, kind, character or description whatsoever;

E. That at the end of each five year period of this Agreement either party hereto may petition for a re-adjustment of the price to be paid hereunder as specified in Paragraph D herein by written notice to the other party to this Agreement, and that if the parties to this Agreement

cannot agree as to the necessity of an adjustment, or as to the adjustment itself, the matter will immediately be decided under the terms of the arbitration clause contained in Paragraph 10 of said Original Agreement;

F. The method of operating said Reservoir including the method of release of water therefrom, as hereinbefore referred to or set forth, for the public purposes referred to herein, shall be deemed the generally accepted method of operation of said Reservoir and the generally accepted method of release of water therefrom, except where emergency or the due and proper carrying out of and compliance with said public purposes may otherwise require or be deemed necessary in the judgment of said District or its Board; provided, however, that there shall be no arbitrary or capricious change in, or modification of, said generally accepted method of operation of said Reservoir or said generally accepted method of water release therefrom;

G. Power Company shall have the privilege, at its option or election, upon giving sixty days' notice in writing to District, of reverting to the terms and conditions of said Original Agreement; such reversion to be effective at the end of said sixty days' notice, from and after which said Original Agreement, and all its terms, conditions and covenants, shall be and become in full force and effect; and

H. This Agreement shall take effect on January 1, 1939, and shall continue in force and effect for the term set forth in Paragraph 14 on Page 6 of said Original Agreement; subject, however, to the provisions of Paragraph G herein.

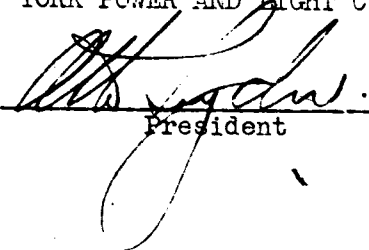
IN WITNESS WHEREOF, the parties hereto have caused their respective

corporate seals to be hereunto affixed and this Agreement to be signed in duplicate by their respective officers thereunto duly authorized, the day and year first above written.


(Corporate  
Seal)

NEW YORK POWER AND LIGHT CORPORATION,

By

  
President

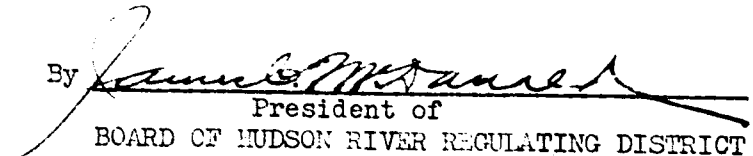
Attest:

  
Secretary

(Corporate  
Seal)

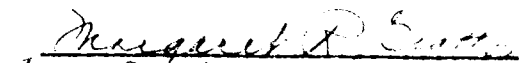
HUDSON RIVER REGULATING DISTRICT,

By

  
President of

BOARD OF HUDSON RIVER REGULATING DISTRICT  
Managing Agency of District

Attest:

  
Secretary

STATE OF NEW YORK

SS.:

COUNTY OF ALBANY

On this 6<sup>th</sup> day of January, 1939, before me, the subscriber, personally came OTTO SNYDER, to me known, who being by me duly sworn, did depose and say, that he resides in the City and County of Albany, State of New York; that he is President of New York Power and Light Corporation, the corporation described in and which executed the foregoing instrument; that he knows the corporate seal of said corporation; that the seal affixed to the foregoing instrument is such corporate seal; that the same was so affixed by authority of the Board of Directors of said corporation, and that he signed his name thereto by like authority.

Mary M. Shanahan  
Notary Public

STATE OF NEW YORK

SS.:

COUNTY OF ALBANY

On this 5<sup>th</sup> day of January, 1939, before me, the subscriber, personally appeared JAMES C. McDONALD, to me known, who being by me duly sworn, did depose and say, that he resides in the City and County of Schenectady, State of New York; that he is President of the Board of Hudson River Regulating District, which Board is the Managing Agency of Hudson River Regulating District, a public corporation organized and existing under the Laws of the State of New York and being the corporation described in and which executed the foregoing instrument; that he knows the corporate seal of said corporation; that the seal affixed to the foregoing instrument is such corporate seal; that the same was so affixed by authority of the said Board of Hudson River Regulating District; and that he signed his name thereto by like authority.

Maria M. Shanahan  
Notary Public





**A G R E E M E N T**

**Between**

**NEW YORK POWER AND LIGHT CORPORATION**

**And**

**HUDSON RIVER REGULATING DISTRICT**

**Dated: September 21st, 1949**

**Readjustment - Contract dated November 14, 1927  
as amended by Agreement dated  
January 5, 1939**

THIS AGREEMENT, made this 21<sup>st</sup> day of September, 1949, between NEW YORK POWER AND LIGHT CORPORATION, a corporation created, organized and existing under the laws of the State of New York, with a principal place of business at No. 126 State Street, in the City and County of Albany, State of New York, party of the first part, hereinafter called Power Company, and HUDSON RIVER REGULATING DISTRICT, a public corporation created, organized and existing pursuant to the provisions of ARTICLE VII-A (now Article VII) of the Conservation Law of the State of New York, party of the second part, hereinafter called District.

W I T N E S S E T H:

WHEREAS, under date of November 14, 1927, Power Company and District entered into an Agreement, a copy of which is hereto annexed for reference thereto herein, which Agreement is hereinafter called Original Agreement; and

WHEREAS, under date of January 5, 1939, Power Company and District entered into an Agreement, hereinafter referred to as the First Amendatory Agreement, modifying and amending the Original Agreement, a copy of which last mentioned Agreement is hereto annexed for reference thereto herein; and

WHEREAS, negotiations have been had between Power Company and District for a readjustment and modification of Paragraph D of the First Amendatory Agreement,

NOW, THEREFORE, Power Company and District mutually covenant and agree that Paragraph D of the First Amendatory Agreement be and the same hereby is amended to read as follows:

"D. That Power Company will pay to District for the purposes of subdivisions (a) and (b) contained in Paragraph 2 on Page 2 of said Original Agreement, under the caption 'Power Company Agrees', the total and fixed sum of ONE HUNDRED TEN THOUSAND (\$110,000) DOLLARS per year, each year during the term of this Agreement, and until such amount may be readjusted as provided in Paragraph E herein, or reversion is had to said Original Agreement as provided in Paragraph G herein; which said sum of \$110,000 shall be paid and be payable in equal monthly installments, each of which said monthly installments shall be paid on or before the 15th day of the month succeeding that for which said installment is due; that said sum of \$110,000 shall not be reduced by any credits or allowances of any name, kind, character or description whatsoever;"

This Agreement shall take effect on January 1, 1949 and shall continue in force and effect for the term set forth in Paragraph 14 on Page 6 of said Original Agreement, subject, however, to the provisions of Paragraph E

and Paragraph G respectively of the First Amendatory Agreement.

IN WITNESS WHEREOF, the parties hereto have caused their respective corporate seals to be hereunto affixed and this Agreement to be signed in duplicate by respective officers thereunto duly authorized, the day and year first above written.

NEW YORK POWER AND LIGHT CORPORATION

By

W. J. Gibson  
President

Attest:

W. J. Francis  
Secretary

HUDSON RIVER REGULATING DISTRICT

By

James Ramsey  
President of the Board

Attest:

Edwin R. Grogan  
Secretary

STATE OF NEW YORK     )  
                                  ) ss.:  
COUNTY OF ALBANY

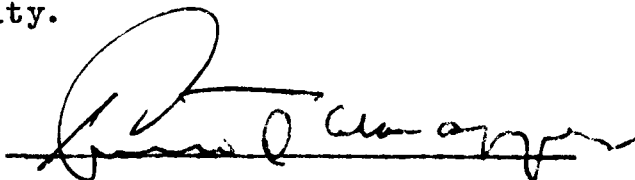
On this 2 day of September, 1949, before me, the subscriber, personally came W. J. GILSON, to me known, who being by me duly sworn, did depose and say, that he resides in the Town of Ballston, Saratoga County, New York; that he is President of New York Power and Light Corporation, the corporation described in and which executed the foregoing instrument; that he knows the corporate seal of said corporation; that the seal affixed to the foregoing instrument is such corporate seal; that the same was so affixed by authority of the Board of Directors of said corporation, and that he signed his name thereto by like authority.



MARTHA M. SMITH  
Notary Public State of New York  
Qualified in Albany County  
My Commission expires March 30, 1951  
Certificate filed in Col., Cort., Dut.,  
Essex, Fulton, Greene, Ham., Herk.,  
Mad., Mont., Oneida, Otsego,  
Putnam, Renss., Sar., Scho., Scho.,  
Warren & Wash. County.

STATE OF NEW YORK     )  
                                  ) ss.:  
COUNTY OF Albany

On this 28<sup>th</sup> day of September, 1949, before me, the subscriber, personally appeared FRED H. RAMSEY, to me known, who by me duly sworn did depose and say that he resides in the City of Johnstown, New York; that he is President of The Board of Hudson River Regulating District, a public corporation organized and existing under the laws of the State of New York, the corporation described in and which executed the foregoing instrument; that he knows the corporate seal of said corporation; that the seal affixed to the foregoing instrument is such corporate seal; that the same was so affixed by authority of the said Board of Hudson River Regulating District; and that he signed his name thereto by like authority.



KENNETH S. MAC ASKER  
Notary Public in the State of New York  
Resident, Albany County, N.Y.  
Cert. filed in Book of Notary Public for Albany County, N.Y.  
Commission Expires March 30, 1951

1951



A G R E E M E N T

Between

NIAGARA MOHAWK POWER CORPORATION

and

HUDSON RIVER REGULATING DISTRICT

Dated: December 28th, 1971

Readjustment - Contract dated November 14th, 1927  
as amended by Agreement dated  
January 5th, 1939, and as amended by  
Agreement dated September 21st, 1949.

THIS AGREEMENT, made this 28<sup>th</sup> day of December, 1971, between NIAGARA MOHAWK POWER CORPORATION, a corporation created, organized and existing under the laws of the State of New York, with a principal place of business at 300 Erie Boulevard West, Syracuse, Onondaga County, New York, party of the first part and hereinafter referred to as the COMPANY, and the HUDSON RIVER-BLACK RIVER REGULATING DISTRICT, created, organized and existing pursuant to Part IX of Article V, Section 598 et seq., of the Conservation Law of the State of New York, party of the second part and hereinafter referred to as the DISTRICT.

W I T N E S S E T H :

WHEREAS, on November 14, 1927, the New York Power and Light Corporation, the COMPANY's predecessor in interest, entered into an Agreement with the Hudson River Regulating District, the DISTRICT's predecessor in interest, a copy of which is hereto annexed for reference thereto herein and which is hereinafter called the Original Agreement; and

WHEREAS, on January 5, 1939, New York Power and Light Corporation and the Hudson River Regulating District entered into an Agreement, hereinafter referred to as the First Amendatory Agreement, modifying and amending the Original Agreement, a copy of which First Amendatory Agreement is annexed hereto for reference thereto herein; and

WHEREAS, on September 21, 1949, New York Power and Light Corporation and the Hudson River Regulating District entered into an Agreement, hereinafter referred to as the Second Amendatory Agreement, modifying and amending the First Amendatory Agreement, a copy of which



Second Amendatory Agreement is annexed hereto for reference thereto herein; and

WHEREAS, negotiations have been and continue to be conducted between the COMPANY and the DISTRICT concerning the terms of the aforementioned Agreements between the predecessors in interest of the COMPANY and the DISTRICT with a view towards entering into a new long-term agreement; and

WHEREAS, the parties deem it advisable, pending the negotiation of a new long-term agreement, to amend the aforementioned Second Amendatory Agreement with respect to the annual water charge payments by the COMPANY to the DISTRICT,

WHEREAS, on the 16th day of December 1971, the Board of the said DISTRICT authorized the President of the DISTRICT to execute this agreement,

NOW, THEREFORE, the COMPANY and the DISTRICT mutually covenant and agree that Paragraph D on Page 2 of the Second Amendatory Agreement be, and the same hereby is, amended to read as follows:

"D. That the COMPANY will pay to the District for the purposes of subdivisions (a) and (b) contained in Paragraph 2 on Page 2 of said Original Agreement, under the caption 'Power Company Agrees', the sum of ONE HUNDRED TWENTY THOUSAND (\$120,000) DOLLARS for the calendar year 1972; the sum of ONE HUNDRED THIRTY THOUSAND (\$130,000) DOLLARS for the calendar year 1973; the sum of ONE HUNDRED FORTY THOUSAND (\$140,000) DOLLARS for the calendar year 1974; and the sum of ONE HUNDRED FIFTY THOUSAND (\$150,000) DOLLARS for the calendar year 1975

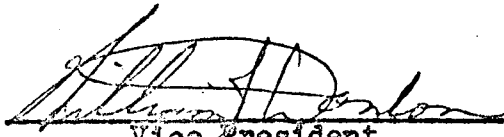
and each succeeding year for the duration of this Agreement, or until such amount may be readjusted as provided in Paragraph E herein, or reversion is had to said Original Agreement as provided in Paragraph G herein, provided, however, that no readjustment of the aforementioned payment figures may occur pursuant to Paragraphs E or G herein prior to calendar year 1976; which said sums of \$120,000, \$130,000, \$140,000, and \$150,000 shall be paid and payable in equal monthly installments (each installment equal in amount to 1/12 of the annual payment), each of which monthly installments shall be paid on or before the 15th day of the months succeeding that for which said installment is due; that the aforementioned annual sums shall not be reduced by any credits or allowances of any name, kind, character or description whatsoever."

This agreement shall take effect on January 1, 1972 and shall continue in force and effect for the term set forth in Paragraph 14 on Page 6 of said Original Agreement, subject, however, to the provisions of Paragraph E and Paragraph G respectively of the First Amendatory Agreement, provided, however, that no change in the annual payments specified in Paragraph "D" may be effected prior to calendar year 1976.

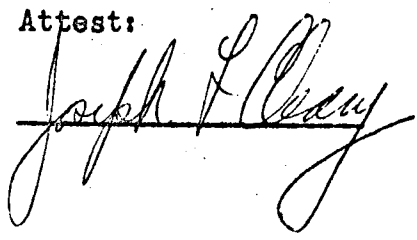
IN WITNESS WHEREOF, the parties hereto have caused their respective seals to be hereunto affixed and this Agreement to be signed in duplicate by their respective officers thereunto duly authorized,

the day and year first above written.

NIAGARA MOHAWK POWER CORPORATION

By:  Vice President *WHD*

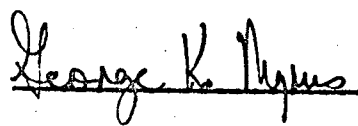
Attest:



HUDSON RIVER-BLACK RIVER REGULATING DISTRICT

By: 

Attest:



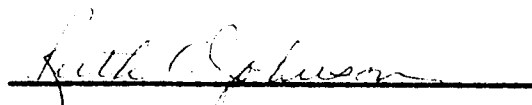
STATE OF NEW YORK :  
County of Jefferson : ss.:

On this 6th day of January , 1972 , before  
me came CARL O. BACHMAN to me known, who, being by me  
duly sworn, did depose and say that he resides 451 Paddock Street,  
Watertown, New York ; that he is President of the  
Board of the HUDSON RIVER-BLACK RIVER REGULATING DISTRICT, the  
public corporation described in and which executed the fore-  
going instrument; that he knows the seal of said corporation;  
that the seal affixed to said instrument is such corporate  
seal; that the same was so affixed by order of the Board of  
Directors of said corporation, and that he signed his name  
thereto by like order.

Nancy J. Steury  
Nancy Public

STATE OF NEW YORK :  
County of Albany : ss.:

On this 25<sup>th</sup> day of December, 19 , before me came William J. Donlon to me known, who being by me duly sworn, did depose and say that he resides at 41 Bower Court, Delmar, New York; that he is a Vice President of NIAGARA MOHAWK POWER CORPORATION, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that the same was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.



RUTH C. JOHNSON  
Notary Public, State of New York  
Qualified in Albany County,  
Commission Expires March 30, 1922



HUDSON RIVER-BLACK RIVER REGULATING DISTRICT  
AND  
NIAGARA MOHAWK POWER CORPORATION

AGREEMENT

Dated: June 17, 1980

THIS AGREEMENT, made the 17th day of June, 1980, between, NIAGARA MOHAWK POWER CORPORATION, a corporation created, organized and existing under the laws of the State of New York, with its principal place of business at 300 Erie Boulevard West, Syracuse, Onondaga County, New York, party of the first part and hereinafter referred to as NIAGARA, and the HUDSON RIVER-BLACK RIVER REGULATING DISTRICT, created, organized and existing pursuant to Title 21 of Article 15 of the Environmental Conservation Law (formerly Part IX of Article V of the Conservation Law) of the State of New York, with its principal office at 90 State Street, Albany, New York, party of the second part and hereinafter referred to as the DISTRICT.

WITNESSETH:

1. The DISTRICT was organized to construct, maintain and operate reservoirs within the Hudson River Regulating District on the Hudson River and its tributaries, including the Sacandaga River. NIAGARA is an electric and gas company organized and existing under the Transportation Corporations Law of the State of New York and provides electric and gas service to customers in Upstate New York.

2. On November 14, 1927, New York Power and Light Corporation, NIAGARA'S predecessor, entered into an Agreement with the Hudson River Regulating District, the DISTRICT'S predecessor, which agreement was from time to time thereafter



amended by the parties.

3. Under the said agreement, the DISTRICT agreed to construct a regulating reservoir on the Sacandaga River and to impound waters by a dam with total head of 71 feet near Conklingville, Saratoga County, New York. NIAGARA conveyed certain lands to the DISTRICT as the site for said dam, reserving for its own purposes 15 feet of head existing on the Sacandaga River. NIAGARA also agreed to construct a power house to generate electric energy from its 15 feet of head and from the additional 56 feet of head created by the DISTRICT'S dam. NIAGARA also agreed to annually pay to the DISTRICT certain sums of money for the use of DISTRICT'S 56 feet of head and additional sums in payment of DISTRICT'S bond issue and towards DISTRICT'S annual operating and maintenance costs.

4. The Regulating Reservoir formerly known as the Sacandaga Reservoir and now known as the Great Sacandaga Lake and the dam known as the Conklingville Dam to impound the waters in said Reservoir, referred to in said Original Agreement, have been duly constructed by the DISTRICT, and have been, and are being operated for the public purposes set forth or referred to in Title 21 of Article 15 of the Environmental Conservation Law (formerly Part IX of Article V of the Conservation Law). NIAGARA constructed the necessary generating facilities, known as the E. J. West Hydroelectric Plant, from which it has been generating electric energy. Both parties fully complied with all

the terms of the Original Agreement and all supplements thereto.

5. Under the terms of the Original Agreement, the agreement was to be binding and in full force between the parties for a period of fifty (50) years from and after the date that the water was first released from the completed dam. Water was first released on June 24, 1930.

6. Negotiations have been conducted between NIAGARA and the DISTRICT concerning the terms of a new agreement between the parties.

NOW, THEREFORE, NIAGARA MOHAWK POWER CORPORATION and the HUDSON RIVER-BLACK RIVER REGULATING DISTRICT mutually covenant and agree as follows:

DISTRICT AGREES:

1. To continue to operate and maintain said dam for the public purposes as by statute provided so that the water impounded by said dam may be taken directly (when, as and if released by the DISTRICT for the regulation of the flow of the river) into NIAGARA'S plant for the purpose of producing electric energy from NIAGARA'S 15 feet of head and DISTRICT'S 56 feet of head as an incident to the operation of the Sacandaga Reservoir for stream regulation.

2. To operate the reservoir, including the release of water therefrom, for the public purposes referred to herein, except where emergency or the due and proper carrying out of and compliance with said public purposes may otherwise require or be deemed necessary in the judgment of the DISTRICT or its Board; provided, however, that there shall be no arbitrary or capricious change in, or modification of the release of water therefrom, without the written consent of both parties. Any redress for violation of this provision shall be limited to the reduction in payment by NIAGARA as provided in paragraph 3 under "Both Parties Agree".

NIAGARA AGREES:

1. To make an annual payment to the DISTRICT for the use of DISTRICT'S 56 feet of head based upon the following formula:

Fifty percent (50%) times the average annual generation in kilowatt hours at the E. J. West Hydroelectric Plant times NIAGARA'S average system cost of hydroelectric generation.

The definition of the components of the formula and the time periods upon which

the components are based (including NIAGARA'S annual payment for the initial 2 years of this agreement) are as follows:

- a. Fifty percent (50%) represents the mutually agreed upon and equitable division of the respective rights of each party, based upon NIAGARA'S investment in the construction, the cost of operation and maintenance of the hydroelectric station, and its ownership of 15 feet of head and the DISTRICT'S ownership of the water rights, 56 feet of head, and the construction, the cost of operation and maintenance of the dam, and its other multi-purpose responsibilities.
- b. The "average annual generation in kilowatt hours" for the first 10 years of this agreement is determined to be 75,000,000 kilowatt hours. Commencing July 1, 1990 and every 10 years thereafter, the parties shall recompute the average annual generation for the next succeeding 10 year period based on the preceding 20 calendar year period.

If at any time NIAGARA fails to utilize available water or reduces the head at E. J.

West which could have been used to produce energy, then the energy which could have been produced shall be considered actually to have been produced for the purposes of all computations of payments hereunder.

c. NIAGARA'S "average system cost of hydroelectric generation" shall be computed by the following formula:

(NIAGARA'S average undepreciated book value of all of its owned hydroelectric plants times its annual charges for owned hydroelectric production) divided by the total hydroelectric generation of all such plants.

NIAGARA'S annual charges for hydroelectric production consist of the annual total of the cost of capital, federal income taxes, depreciation, other taxes, working capital, operation and maintenance expenses, and revenue taxes as applied to its hydroelectric facilities and is developed in Appendix II.

All of these components are available in the "Annual Report of Niagara Mohawk Power Corporation to the State of New York - Public Service

Commission" which is filed with the Public Service Commission prior to April 1 of each year. The computation of NIAGARA'S "average system cost of hydroelectric generation", including the computation utilized in this agreement for the first two years thereof, is described in Appendix III attached hereto and made a part hereof.

In computing NIAGARA'S average system cost of hydroelectric generation, only NIAGARA'S owned hydroelectric generating stations in existence as of July 1, 1980 shall be utilized. These generating stations are described in Appendix I of this agreement and are derived from the annual report of Niagara Mohawk Power Corporation to the Federal Energy Regulatory Commission as shown on Form I, Schedules 433a-A and 434-A. In the biennial updating of Appendix I, the then current cost of plant, as reported annually to the Federal Energy Regulatory Commission shall be utilized. These schedules reflect facility plant retirements and additions including new investment in major reconstruction and associated change in energy production.

2. That the payment by NIAGARA to the DISTRICT shall be readjusted every 2 years as of July 1st for the succeeding 2

years with such adjustment incorporating NIAGARA'S average system cost of hydroelectric generation for the preceding calendar year. The next readjustment shall be as of July 1, 1982 and each succeeding two-year period thereafter.

3. For the period July 1, 1980 to June 30, 1982, NIAGARA'S annual payments shall be based on its average system cost of hydroelectric generation for 1979 of 13.204 mills and the heretofore agreed average annual generation of 75,000,000 kilowatt hours. NIAGARA'S annual payment for such period shall be \$495,150. Notwithstanding the provision of paragraph 2 above, NIAGARA'S annual payment for the period July 1, 1980 through June 30, 2000 shall not be less than \$495,150, subject, however, to the provisions as hereinafter set forth concerning reductions in water availability due to legislative or regulatory action.

4. To make payment on or before the 15th day of each month, representing one-twelfth (1/12) of the annual payment.

5. To maintain its facilities at the E. J. West Plant for the purpose of releasing waters during extreme emergencies or flood conditions as a supplement to the DISTRICT'S regulating facilities. If the DISTRICT, under such extreme emergencies or flood conditions, is at full discharge capacity, then NIAGARA will assist in discharging to protect the stability of all facilities.

BOTH PARTIES AGREE:

1. This agreement shall take effect as of July 1, 1980, and shall continue in full force and effect for a period of 50 years thereafter.

2. To mutually cooperate during the term of this agreement to explore re-regulating ponding and releases from the Great Sacandaga Reservoir to best harmonize conflicting interests to improved recreational uses of the Great Sacandaga Reservoir during July and August versus the stated purpose of the DISTRICT in creating the reservoir for stream regulation, flood protection and hydroelectric generation versus the rights of property owners affected by high water by changes in the generally accepted method of ponding and release of water.

3. There shall be no arbitrary or capricious change in the release of water from said reservoir without the mutual written agreement of the parties. If, by statute or action of the DISTRICT, or any other governmental body, NIAGARA'S 1960-1980 average monthly amount of water available to the E. J. West Plant is reduced by more than 20% in any month, the next year's annual payment shall be reduced in an amount to reflect the total percentage reduction times 1/12 for each such month of reduced water availability.



4. It is agreed by and between the parties hereto in the event that any controversy arises between the parties with respect to the terms or conditions of the agreement or with respect to the duties or obligations of any of the parties thereto, said controversy shall be submitted to the Supreme Court of the State of New York, County of Albany, for determination pursuant to the New York Simplified Procedure for Court Determination of Disputes, as provided for by CPLR 3031 et seq.

5. The DISTRICT shall have the right, upon giving NIAGARA two (2) years written notice, to terminate this contract and to acquire said 15 feet of head and the power house project, including lands and rights and construction, upon payment of just compensation therefor as provided by law and upon payment to NIAGARA of the amount invested by NIAGARA in its power plant and works and not theretofore amortized.

6. The DISTRICT shall have the right at all times to limit and control the amount of water used by NIAGARA and, for that purpose, to enter upon the premises of NIAGARA and to operate the gates and/or valves controlling the flow of water to the power plant in such manner as in its uncontrolled discretion may seem necessary and expedient for the proper regulation of the flow of the stream.

7. The method of computing NIAGARA'S "average system cost of hydroelectric generation" (as defined in paragraph 1-c of this

agreement), shall, at the request of either party, be subject to renegotiation by the parties hereto in recomputing the biennial computation of payment by NIAGARA for the period commencing July 1, 2000 and thereafter.

8. Nothing in this contract shall be construed as in any way limiting the rights of the DISTRICT to release water impounded by the dam at whatsoever rate and whatsoever time the DISTRICT desires or as in any manner to interfere with the purpose for which the dam is built.

9. This agreement shall enure to the benefit of and bind the successors and assigns of each of the parties hereto as well as the parties themselves.

IN WITNESS WHEREOF, the parties hereto have caused their respective seals to be hereunto affixed and this agreement to be signed in duplicate by their respective officers thereunto duly authorized the day and year first above written.

NIAGARA MOHAWK POWER CORPORATION

By Richard C. Clancy  
Richard C. Clancy  
Senior Vice President

HUDSON RIVER-BLACK RIVER  
REGULATING DISTRICT

By James A. [Signature]  
President / Chairman

STATE OF NEW YORK :  
: ss.:  
County of Onondaga :

On this 17th day of June, 1980, before me came RICHARD C. CLANCY, to me known, who being by me duly sworn, did depose and say that he resides at Two Sleepy Hollow Lane, Fayetteville, New York 13066; that he is a Senior Vice President of NIAGARA MOHAWK POWER CORPORATION, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that the same was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

*Phyllis J. Haytko*

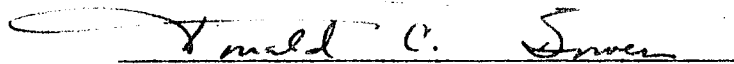
Notary Public in and for the State of New York  
Qualified to commission on 11-14-80 98595  
My office is located at 140 West 14th Street, New York, N.Y. 10011

STATE OF NEW YORK :  
: ss.:  
County of Albany :

On this 23<sup>rd</sup> day of JUNE, 1980, before me came Louis ANTHONY, Jr., to me known, who, being by me duly sworn, did depose and say that he resides at 66 North Lake Ave., Troy, New York, 12180; that he is

President of the Board of the HUDSON RIVER-BLACK RIVER REGULATING DISTRICT, the public corporation described in and which executed

the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that the same was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto be like order.

A handwritten signature in cursive script, reading "Donald C. Bowes", is written over a horizontal line.

DONALD C. BOWES  
Notary Public, State of New York  
Qualified in Rensselaer County  
Commission Expires March 30, 1981

## APPENDIX I

NIAGARA MOHAWK POWER CORPORATION  
OWNED HYDROELECTRIC GENERATING STATIONS

AS OF JULY 1, 1980

Name	1979 Net Gen KWHR	Cost of Plant - Dollars	
		1979	1978
Large Plant - (FERC Form 1 433a-A)			
Beardslee	45,997,500	3,812,509	3,824,425
Bennetts Bridge	80,909,000	4,812,384	4,794,281
Blake	69,642,000	5,777,542	5,773,242
Browns Falls	65,746,000	5,499,293	5,499,293
Colton	206,512,000	5,745,295	5,745,295
Deferiet	65,896,000	2,764,868	2,663,537
Five Falls	109,233,000	4,946,331	4,946,331
Prospect	77,574,000	5,766,335	5,766,335
Rainbow	112,329,000	6,657,187	6,607,961
Schaghticoke	63,534,500	1,359,193	1,356,505
School Street	121,880,500	3,874,576	3,776,058
Sherman Island	152,105,000	8,899,604	8,769,789
Soft Maple	45,524,000	3,040,292	3,002,679
South Colton	84,510,000	4,207,093	4,207,093
Spier Falls	237,165,000	9,069,821	9,041,429
Stark	107,937,000	6,462,596	6,458,136
Stewarts Bridge	146,821,881	9,401,113	9,401,113
Trenton	125,311,000	3,029,664	2,940,343
E. J. West	77,657,500	1,758,042	1,738,309
Total Large Plants	1,996,284,681	96,883,738	96,312,154

## APPENDIX I

NIAGARA MOHAWK POWER CORPORATION  
OWNED HYDROELECTRIC GENERATING STATIONS

AS OF JULY 1, 1980

Name	1979 Net Gen KWHR	Cost of Plant - Dollars	
		1979	1978
Small Plant - (FERC Form 1 434-A)			
Allens Falls	26,471,000	917,271	914,389
Bakers Falls	-	1,079,853	1,079,853
Baldwinsville	2,326,000	293,713	296,771
Belfort	7,862,000	394,671	325,394
Black River	22,759,000	2,289,683	1,144,136
Chasm	23,632,000	383,059	383,059
Diamond Island	-	380,786	380,786
Eagle	37,044,000	1,626,526	1,624,828
East Norfolk	26,205,000	1,528,787	1,528,883
Eel Weir	9,813,000	1,859,733	1,519,071
Effley	13,987,000	537,314	540,345
Elmer	8,912,000	208,556	208,556
Ephatah	15,474,100	1,554,247	1,438,368
Flat Rock	20,403,000	1,125,859	1,125,618
Fort Edward	-	-	664,982
Franklin	9,411,000	320,570	316,247
Fulton	-	264,370	251,865
Glenwood	4,284,100	373,373	358,173
Granby	4,397,000	798,253	798,253
Green Island	17,805,600	2,553,921	2,547,780
Hannawa	52,532,000	1,260,585	1,241,842
Herrings	26,352,000	1,177,164	1,175,446
Heuvelton	4,863,000	593,455	516,170
High Falls	34,310,000	1,013,928	1,011,309
Higley	29,955,000	1,217,703	1,227,447
Hogansburg	2,189,000	515,862	300,985
Hydraulic Race	11,032,000	694,286	694,286
Inghams	27,033,000	970,562	966,483
Johnsonville	10,333,400	561,761	591,761
Kamargo	24,878,000	1,441,398	1,413,867
Lighthouse Hill	38,173,000	2,029,782	2,013,729
Macomb	5,616,000	133,247	133,247
Mechanicville	1,653,800	2,109,609	1,035,922
Middle Falls	3,747,100	192,353	193,749
Minetto	34,561,000	1,213,074	1,147,722
Moreau	10,141,700	1,301,282	1,301,282
Moshier	24,606,000	5,510,195	2,599,975
Norfolk	24,244,000	1,095,789	1,096,789
Norwood	15,708,000	613,667	613,667
Oak Orchard	-	67,481	67,481

## APPENDIX I

NIAGARA MOHAWK POWER CORPORATION  
OWNED HYDROELECTRIC GENERATING STATIONS

AS OF JULY 1, 1980

Name	1979 Net Gen KWHR	Cost of Plant - Dollars	
		1979	1978
Oswegatchie	3,670,000	95,297	82,665
Oswego Falls E. Side	19,993,000	641,760	616,669
Oswego Falls W. Side	1,974,000	524,851	524,318
Piercefield	16,295,000	1,269,294	1,267,754
Parishville	16,233,000	418,454	417,994
Raymondville	11,759,000	1,053,293	578,214
Schuylerville	6,450,000	217,062	217,062
Sewalls	9,387,000	3,390,669	528,325
South Edwards	18,782,000	2,099,520	2,096,111
South Glens Falls	17,927,000	1,412,721	1,433,032
Stuyvesant Falls	(7,000)	577,802	577,802
Sugar Island	32,322,000	1,307,065	1,307,065
Taylorville	28,480,000	1,100,054	936,649
Theresa	41,000	290,158	290,158
Union	-	436,449	439,559
Varick	27,871,000	2,826,258	2,826,258
Victory Mills	(1,300)	82,720	82,720
Waterport	13,118,000	1,007,648	976,509
Yaleville	3,520,000	889,828	902,761
 Total Small Plants	 860,527,200	 61,844,631	 52,892,141
Total Large Plants	1,996,284,681	96,883,738	96,312,154
TOTAL HYDRO	2,856,811,881	158,728,369	149,204,295
 AVERAGE Cost of Plant		 153,966,333	

## APPENDIX II

## NIAGARA MOHAWK POWER CORPORATION

1979 ANNUAL CHARGES FOR OWNED HYDROELECTRIC PRODUCTIONI. Cost of Capital

At December 31, 1979				
	\$	%	Cost	Component
Long Term Debt	\$1,508,050	48.77%	7.42%	3.62%
Preferred Stock	406,600	13.15	6.84	.90
Common Equity	1,177,724	38.08	13.30	5.06
Total	\$3,092,374	100.00%		9.58%

Levelized Cost of Capital:

$$(100) \left[ \frac{(.0958)(1+.0958)^{70}}{(1+.0958)^{70} - 1} - .0143 \right] = 8.2\%$$

II. Federal Income Taxes

Preferred Stock Component	.90%
Common Equity Component	5.06
	5.96%

$$\text{FIT} = 5.96\% \frac{(46\%)}{(54\%)} = 5.1\%$$

III. Depreciation

Book Life = 70 years

$$\text{Book Depreciation} = \frac{1}{70} = 1.4\%$$



## APPENDIX II

## NIAGARA MOHAWK POWER CORPORATION

1979 ANNUAL CHARGES FOR OWNED HYDROELECTRIC PRODUCTIONIV. Other Taxes

A. Total Electric Taxes Charged to Operations	\$137,747,130	3
Less:		
FIT	1,337,000	4
NYS Gross Earnings	8,511,786	5
NYS Gross Income	31,877,311	6
Municipal Gross Income	5,315,708	7
Net	\$ 90,705,325	
B. Average Electric Plant-in-Service:		
$\frac{\$2,652,808,244 + 2,830,387,288}{2} = \$2,741,597,766$		
C. Other Taxes =	$\frac{\$ 90,705,325}{\$2,741,597,766}$	= 3.3%

V. Operation and Maintenance - Hydro

A. Operating Expense	= \$3,541,371	9
Maintenance Expense	= 5,221,205	10
Total O & M	\$8,762,576	
B. Average Hydroelectric Plant-in-Service		
$\frac{\$154,948,046 + \$164,661,913}{2} = \$159,804,980$		
C. Operation & Maintenance =	$\frac{\$ 8,762,576}{\$159,804,980}$	= 5.5%

VI. Working Capital

A. Hydroelectric Operation and Maintenance Expense	= \$8,762,576
B. Unlevel Return plus FIT	= 9.58% + 5.07 = 14.65%
C. Average Hydroelectric Plant-in-Service	= \$159,804,980

## APPENDIX II

## NIAGARA MOHAWK POWER CORPORATION

1979 ANNUAL CHARGES FOR OWNED HYDROELECTRIC PRODUCTIONVI. Working Capital - cont'd

## D. Working Capital:

$$\frac{(\$8,762,576) (14.65\%)}{8}$$

$$\frac{\$159,804,980}{8}$$

= .1%

VII. Revenue TaxesA. New York State Gross Earnings  
Tax Rate

.75%

New York State Gross Income  
Tax Rate

3.00

Total

3.75%

## B. Revenue Tax:

$$\frac{(\text{Revenue Tax Rate})}{(1 - \text{Revenue Tax Rate})} (\text{Sum of Other Components}) =$$

$$\frac{(.0375)}{(1 - .0375)} (23.6\%)$$

= .9%

VIII. Notes:

All references are to the "Annual Report of Niagara Mohawk Power Corporation to the State of New York - Public Service Commission".

- 1 Page 11, lines 19 & 20
- 2 Page 11, line 3, less line 12
- 3 Page 57A
- 4 Page 57
- 5 Page 57
- 6 Page 57

## APPENDIX II

## NIAGARA MOHAWK POWER CORPORATION

1979 ANNUAL CHARGES FOR OWNED HYDROELECTRIC PRODUCTIONVIII. Notes - cont'd

- 7 Page 57
- 8 Page E-4
- 9 Page E-19
- 10 Page E-19
- 11 Page E-2

IX. Summary of 1979 Annual Charges for Hydroelectric Production

I.	Cost of Capital	8.2%
II.	Federal Income Taxes	5.1
III.	Depreciation	1.4
IV.	Other Taxes	3.3
V.	Operation and Maintenance - Hydro	5.5
VI.	Working Capital	.1
VII.	Revenue Taxes	<u>.9</u>
	TOTAL	24.5%



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 1<sup>st</sup> of each year and ending on June 30<sup>th</sup> 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 15<sup>th</sup> 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 *lee*

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 1<sup>st</sup> 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, 5<sup>th</sup> 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, 14<sup>th</sup> Floor**  
625 Broadway, Albany, New York 12233-1500  
Phone: (518) 402-9184 • FAX: (518) 402-9018  
Website: [www.dec.state.ny.us](http://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.

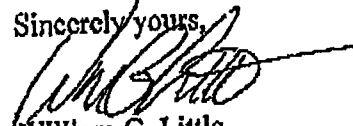
ECL §15-2133 provides for reservoir releases to address flooding or other emergency situations when the waters of the reservoir rise above the maximum or "high" flow line. The operational provisions for management of releases set forth in the Settlement Agreement will allow the Hudson River Black River 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

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HUDSON RIVER – BLACK RIVER  
REGULATING DISTRICT,

Plaintiff,

- against -

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

Defendants.

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**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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David M. Cherubin  
Crane, Greene & Parente  
Attorneys for Plaintiff  
90 State Street  
Albany, New York 12207  
90 State Street  
Albany, New York 12207  
(518) 432-8000

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Karla M. Corpus  
Hiscock & Barclay, LLP  
Attorneys for Defendants Erie Boulevard  
Hydropower, L.P. and Niagara Mohawk  
Power Corporation  
Financial Plaza, P.O. Box 4878  
Syracuse, New York 13221  
(315) 471-8111

## 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 1<sup>st</sup> 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 R. Hyman  
Name: Michael R. Hyman  
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



Board of Hudson River-Black River Regulating District  
350 Northern Boulevard, Albany, New York 12204 Phone (518) 465-3491  
FAX (518) 432-2485

Dated as of July 1, 2003

Erie Boulevard Hydropower, L.P.  
440 Ninth Avenue, 5<sup>th</sup> 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-ration 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.

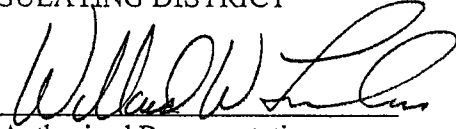
This Letter Agreement shall be governed by and interpreted in accordance with the internal laws of the State of New York without regard to conflicts of laws principles. Without limiting the terms and conditions of this Letter Agreement, including but not limited to, those terms and conditions regarding 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.

If you agree with the terms and conditions set forth herein, please acknowledge such agreement by executing the signature block below.

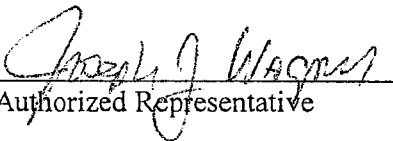
Very truly yours,

HUDSON RIVER BLACK RIVER  
REGULATING DISTRICT

By:   
Authorized Representative

Agreed to this 1<sup>st</sup> day  
of July, 2003

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

By:  *mc*  
Authorized Representative

**AMENDMENT TO RESERVOIR OPERATING AGREEMENT  
AND LETTER AGREEMENT**

This **AMENDMENT TO RESERVOIR OPERATING AGREEMENT AND LETTER AGREEMENT** (this "*Amendment*"), dated as of May 19, 2006, is by and between the HUDSON RIVER-BLACK RIVER REGULATING DISTRICT, a public benefit corporation organized and existing under the laws of the State of New York, having offices at 350 Northern Boulevard, Albany, New York 12204 (the "*District*"), and ERIE BOULEVARD HYDROPOWER, L.P., a Delaware limited partnership, having offices at 225 Greenfield Parkway, Suite 205, Liverpool, New York 13088 ("*Erie*").

**WITNESSETH:**

**WHEREAS**, the parties hereto have entered into that certain Reservoir Operating Agreement, dated as of July 1, 2003 (the "*Reservoir Operating Agreement*"), and that certain Letter Agreement, dated as of July 1, 2003 (the "*Letter Agreement*");

**WHEREAS**, the parties hereto have separately entered into a Stipulation of Settlement and Order, dated as of the date hereof (the "*Stipulation of Settlement and Order*"), pursuant to which they have settled certain claims filed by Erie contesting the District's budgets, assessments and apportionments for the District's fiscal years commencing July 1, 2000 and ending June 30, 2006;

**WHEREAS**, as partial consideration of the Stipulation of Settlement and Order, the parties have agreed to amend the Reservoir Operating Agreement and the Letter Agreement, in accordance with the terms and conditions set forth herein;

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants set forth herein and in the Stipulation of Settlement and Order, the parties hereby agree as follows:

1. **DEFINITIONS.** Capitalized terms used but not defined herein shall have the meanings assigned thereto in the Reservoir Operating Agreement.
2. **AMENDMENTS TO RESERVOIR OPERATING AGREEMENT.** The Reservoir Operating Agreement shall be and is hereby amended, as of the date hereof, as follows:
  - a. **Term Extended.** The term of the Reservoir Operating Agreement shall be extended an additional six (6) years. Accordingly, Section 3.1 shall be deleted in its entirety and the following substituted in lieu thereof:

**Term and Renewal.** This Agreement shall commence as of July 1, 2003 and shall continue in full force and effect until June 30, 2021 unless terminated as of an earlier date as otherwise provided herein. The District and Erie hereby agree to meet or initiate discussions on or before June 30, 2020 to discuss the extension or renegotiation of this Agreement.

- b. **Adjustment in the Water Fee.** The Reservoir Operating Agreement shall be amended such that an Adjustment in the Water Fee will be triggered upon two (2) separate and consecutive Events of Non-Cooperation by the District within any two (2) year period, rather than three (3) separate and consecutive Events of Non-Cooperation by the District in any three (3) year period. Moreover, once an Adjustment in the Water Fee is triggered, it will cause the Water Fee Increase to be waived for the next succeeding two (2) years, rather than the next one (1) year. Accordingly, Section 5.2 shall be deleted in its entirety and the following substituted in lieu thereof:

Upon the occurrence, within any two (2) calendar year period, of two (2) separate and consecutive determinations of an Event of Non-Cooperation by the District, the Water Fee Increase shall be waived for the next succeeding two (2) years in which an Adjustment in the Water Fee (as defined below) has not already occurred; 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 two (2) calendar year period as the respective Events of Non-Cooperation by the District. A waiver of the Water Fee Increase to which Erie is entitled is referred to herein as an "Adjustment in the Water Fee."

For example, if, by 2013, a determination of an Event of Non-Cooperation by the District has been made three times in 2006 and once in each of 2007, 2008, 2009, 2011 and 2013, then Erie shall be entitled to the following Adjustments in the Water Fee:

- (i) The first Adjustment in the Water Fee would occur in 2006 after the second determination of an Event of Non-Cooperation by the District in that year, which would result in the waiver of the Water Fee Increase for years 2007 and 2008.
- (ii) The second Adjustment in the Water Fee would occur in 2007 after the third Event of Non-Cooperation by the District in 2006 and the Event of Non-Cooperation by the District in 2007, which would result in the waiver of the Water Fee Increase for years 2009 (because 2008 was already waived) and 2010 such that the 2006 rate would remain in effect through 2010.
- (iii) The third Adjustment in the Water Fee would occur in 2009 after the Events of Non-Cooperation by the District in each of years 2008 and 2009, which would result in the waiver of the Water Fee Increase for years 2011 (because 2010 was already waived) and 2012 such that the 2006 rate would remain in effect through 2012.

Using the above referenced scenario, although there are two (2) separate and consecutive determinations of an Event of Non-Cooperation by the District in the

period 2011-2013, Erie is not entitled to an Adjustment in the Water Fee in 2013 because the two (2) separate and consecutive determinations of an Event of Non-Cooperation by the District did not occur within any two (2) calendar year period. Therefore, in 2013, the Water Fee would increase to the rate that would have been in effect in 2013 if the Adjustments in the Water Fee had not been applied for each of the prior six years.

Further, using the same scenario above, if the second determination of an Event of Non-Cooperation by the District in 2006 was, instead, a determination of an Event of Non-Cooperation by Erie, then the first Adjustment in the Water Fee would not occur until 2007 as the determination of an Event of Non-Cooperation by Erie in 2006 bars "use" of the first determination of an Event of Non-Cooperation by the District in 2006 as said determination is no longer a consecutive determination with the second determination of an Event of Non-Cooperation by the District in that same year.

**3. AMENDMENTS TO LETTER AGREEMENT.** The Letter Agreement shall be and is hereby amended, as of the date hereof, as follows:

- a. **Term Not Extended.** The term of the Letter Agreement currently expires in accordance with the Reservoir Operating Agreement. Because the parties do not wish to extend the term of the Letter Agreement, the last paragraph of the Letter Agreement shall be deleted in its entirety and the following substituted in lieu thereof:

This Letter 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.

- b. **Adjustment in the Water Fee.** The Letter Agreement shall be amended to reflect the agreement herein to amend Section 5.2 of the Reservoir Operating Agreement. Accordingly, the third and forth paragraphs on page 3 and the first and second paragraphs of page 4 of the Letter Agreement shall be deleted in their entirety and the following substituted in lieu thereof:

As set forth in Section 5.2 of the Reservoir Operating Agreement, upon the occurrence, within any two (2) calendar year period, of two (2) separate and consecutive determinations of an Event of Non-Cooperation by the District, the Water Fee Increase shall be waived for the next succeeding two (2) years in which an Adjustment in the Water Fee has not already occurred; 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 two (2) calendar year period as the respective Events of Non-Cooperation by the District.

For example, if, by 2013, a determination of an Event of Non-Cooperation by the District has been made three times in 2006 and once in each of 2007, 2008, 2009,

2011 and 2013, then Erie shall be entitled to the following Adjustments in the Water Fee:

(i) The first Adjustment in the Water Fee would occur in 2006 after the second determination of an Event of Non-Cooperation by the District in that year, which would result in the waiver of the Water Fee Increase for years 2007 and 2008.

(iii) The second Adjustment in the Water Fee would occur in 2007 after the third Event of Non-Cooperation by the District in 2006 and the Event of Non-Cooperation by the District in 2007, which would result in the waiver of the Water Fee Increase for years 2009 (because 2008 was already waived) and 2010 such that the 2006 rate would remain in effect through 2010.

(iii) The third Adjustment in the Water Fee would occur in 2009 after the Events of Non-Cooperation by the District in each of years 2008 and 2009, which would result in the waiver of the Water Fee Increase for years 2011 (because 2010 was already waived) and 2012 such that the 2006 rate would remain in effect through 2012.

Using the above referenced scenario, although there are two (2) separate and consecutive determinations of an Event of Non-Cooperation by the District in the period 2011-2013, Erie is not entitled to an Adjustment in the Water Fee in 2013 because the two (2) separate and consecutive determinations of an Event of Non-Cooperation by the District did not occur within any two (2) calendar year period. Therefore, in 2013, the Water Fee would increase to the rate that would have been in effect in 2013 if the Adjustments in the Water Fee had not been applied for each of the prior six years.

Further, using the same scenario above, if the second determination of an Event of Non-Cooperation by the District in 2006 was, instead, a determination of an Event of Non-Cooperation by Erie, then the first Adjustment in the Water Fee would not occur until 2007 as the determination of an Event of Non-Cooperation by Erie in 2006 bars "use" of the first determination of an Event of Non-Cooperation by the District in 2006 as said determination is no longer a consecutive determination with the second determination of an Event of Non-Cooperation by the District in that same year.

- 4. AGREEMENTS IN FULL FORCE AND EFFECT.** Except as amended by this Amendment, all terms and conditions of the Reservoir Operating Agreement and the Letter Agreement (collectively, the "*Agreements*") shall remain unchanged. In the event of any inconsistency between the remaining terms and conditions of the Agreements and this Amendment, the remaining terms and conditions of the Agreements shall be interpreted so as to give effect, to the maximum extent possible, to the provisions contained in this Amendment.



5. **HEADINGS.** The various headings used in this Amendment are inserted for convenience of reference only, do not form a part of this Amendment, and shall not affect the meaning or interpretation of this Amendment or any provision thereof.

6. **REFERENCES TO AGREEMENTS.**

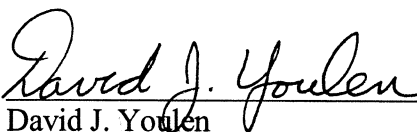
- a. From and after the date hereof: (i) all references in the Reservoir Operating Agreement to "this Agreement," "hereof," "herein," or similar terms and (ii) all references to the Reservoir Operating Agreement in each agreement, instrument and other document executed or delivered in connection with the Reservoir Operating Agreement, shall mean and refer to the Reservoir Operating Agreement as amended by this Amendment.
- b. From and after the date hereof: (i) all references in the Letter Agreement to "this Letter Agreement," "hereof," "herein," or similar terms and (ii) all references to the Letter Agreement in each agreement, instrument and other document executed or delivered in connection with the Letter Agreement, shall mean and refer to the Letter Agreement as amended by this Amendment.

**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment to be signed by their respective duly authorized officers or representatives as of the date indicated above.

For and on behalf of:  
HUDSON RIVER-BLACK RIVER  
REGULATING DISTRICT

By:   
Glenn A. LaFave  
Executive Director

For and on behalf of:  
ERIE BOULEVARD HYDROPOWER,  
L.P.

By:   
David J. Youlen  
Vice President

## SECOND AMENDMENT TO RESERVOIR OPERATING AGREEMENT

This Amendment to Reservoir Operating Agreement, dated as of 16 June May 2021, is by and between the **HUDSON RIVER – BLACK RIVER REGULATING DISTRICT**, a public benefit corporation organized and existing under the laws of the State of New York, having offices at 350 Northern Boulevard, Albany, New York 12204 (the “District”), and **ERIE BOULEVARD HYDROPOWER, L.P.**, a Delaware limited partnership, having offices at 200 Liberty Street, 14<sup>th</sup> Floor, New York, New York 10281 (“Erie”).

### WITNESSETH:

**WHEREAS**, the parties have entered into that certain Reservoir Operating Agreement, dated as of July 1, 2003 (the “*Reservoir Operating Agreement*”), and that certain Amendment to Reservoir Operating Agreement, dated as of May 19, 2006 (the “*Amendment to Reservoir Operating Agreement*”);

**NOW, THEREFORE**, in consideration of the premises and the mutual covenant set forth herein, the parties hereby agree as follows:

1. **DEFINITIONS.** Capitalized terms used by not defined herein shall have the meanings assigned thereto in the Reservoir Operating Agreement as amended by the Amendment to Reservoir Operating Agreement.
2. **AMENDMENTS TO RESERVOIR OPERATING AGREEMENT** as amended on May 19, 2006. The Reservoir Operating Agreement shall be and is hereby amended, as of the date hereof, as follows:
  - a. **Term Extended.** The Term of the Reservoir Operating Agreement shall be extended an additional one (1) year. Accordingly, Section 3.1, as amended by the May 19, 2006 Amendment to Reservoir Operating Agreement shall be deleted in its entirety and the following substituted in lieu thereof:

**Term and Renewal.** This Agreement shall commence as of July 1, 2003 and shall continue in full force and effect until June 30, 2022 unless terminated as of an earlier date as otherwise provided herein. The District and Erie hereby agree to meet or initiate discussions on or before July 1, 2021 to discuss the extension or renegotiation of this Agreement.

- b. **Notices.** The Notice provision shall be updated to discontinue the use of facsimile transmission and to update contact information. Accordingly, Section 7.1 shall be deleted in its entirety and the following substituted in lieu thereof:

**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 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 email 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.: John Callaghan

To Erie: c/o Brookfield Renewable  
200 Liberty Street, 14<sup>th</sup> Floor  
New York, New York 10281  
Attn: General Counsel – US

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.


3. **AGREEMENT IN FULL FORCE AND EFFECT.** Except as amended by this Second Amendment to Reservoir Operating Agreement, all terms and conditions of the Reservoir Operating Agreement, as amended by the May 19, 2006 Amendment to the Reservoir Operating Agreement, shall remain unchanged. In the event of any inconsistency between the remaining terms and conditions of the Agreements and this amendment, the remaining terms and conditions of the Agreement shall be interpreted so as to give effect, to the maximum extent possible, to the provisions contained in this Second Amendment.
4. **HEADINGS.** The various headings used in this Second Amendment are inserted for convenience of reference only, do not form a part of this Second Amendment, and shall not affect the meaning or interpretation of this Second Amendment or any provision thereof.
5. **REFERENCES TO AGREEMENTS.** From and after the date hereof: (i) all references in the Reservoir Operating Agreement to “this Agreement”, “hereof”, “Herein”, or similar terms and (ii) all references to the Reservoir Operating Agreement in each agreement, instrument and other document executed or delivered in connection with the Reservoir Operating Agreement, shall mean and refer to the Reservoir Operating Agreement as amended by the May 19, 2006 Amendment to Reservoir Operating Agreement and this Second Amendment to Reservoir Operating Agreement.

*[Signature pages follow]*

**IN WITNESS WHEREOF**, the parties hereto have caused this Second Amendment to be signed by their respective duly authorized officers or representatives as of the date indicated above.


For and on behalf of:


HUDSON RIVER – BLACK RIVER  
REGULATING DISTRICT

By:   
Name: John C. Callaghan  
Title: Executive Director

For and on behalf of:

ERIE BOULEVARD HYDROPOWER, L.P.

By:   
Name: Stephen Gallagher  
Title: Chief Commercial Officer

By:   
Name: Thomas Deedy  
Title: Chief Operating Officer

### THIRD AMENDMENT TO RESERVOIR OPERATING AGREEMENT

This Amendment to Reservoir Operating Agreement, dated as of June 29, 2022, is by and between the **HUDSON RIVER – BLACK RIVER REGULATING DISTRICT**, a public benefit corporation organized and existing under the laws of the State of New York, having offices at 575 Broadway, Third Floor, Albany, New York 12207 (the “District”), and **ERIE BOULEVARD HYDROPOWER, L.P.**, a Delaware limited partnership, having offices at 200 Liberty Street, 14<sup>th</sup> Floor, New York, New York 10281 (“Erie”).

#### WITNESSETH:

**WHEREAS**, the parties have entered into that certain Reservoir Operating Agreement, dated as of July 1, 2003 (the “*Reservoir Operating Agreement*”), that certain Amendment to Reservoir Operating Agreement, dated as of May 19, 2006 (the “*Amendment to Reservoir Operating Agreement*”), and that certain Second Amendment to Reservoir Operating Agreement, dated June 16, 2021 (the “*Second Amendment to Reservoir Operating Agreement*”);

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants set forth herein, the parties hereby agree as follows:

1. **DEFINITIONS.** Capitalized terms used but not defined herein shall have the meanings assigned thereto in the Reservoir Operating Agreement, the Amendment to Reservoir Operating Agreement and the Second Amendment to Reservoir Operating Agreement.
2. **AMENDMENTS TO RESERVOIR OPERATING AGREEMENT** as amended on May 19, 2006 and June 16, 2021. The Reservoir Operating Agreement shall be and is hereby amended, as of the date hereof, as follows:
  - a. **Term Extended.** The Term of the Reservoir Operating Agreement shall be extended an additional six months. Accordingly, Section 3.1, as amended by the May 19, 2006 Amendment to Reservoir Operating Agreement, and, as further amended by the June 16, 2021 Amendment to Reservoir Operating Agreement, shall be deleted in its entirety and the following substituted in lieu thereof:

**Term and Renewal.** This Agreement shall commence as of July 1, 2003 and shall continue in full force and effect until December 31, 2022 unless terminated as of an earlier date as otherwise provided herein. The District and Erie hereby agree to continue to meet to discuss the extension or renegotiation of this Agreement.

- b. **Notices.** The Notice provision shall be updated to update contact information. Accordingly, Section 7.1 shall be deleted in its entirety and the following substituted in lieu thereof:

**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 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 email 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: 575 Broadway, Third Floor  
Albany, New York 12207  
Attn.: John C. Callaghan, Executive Director

To Erie: 200 Liberty Street, 14<sup>th</sup> Floor  
c/o Brookfield Renewable  
New York, New York 10281  
Attn: General Counsel – U.S.

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.

- c. **Documents Which Constitute an Integral Part of this Agreement.** The following documents shall constitute integral parts of this agreement. Accordingly, Section 7.17 will be added to read as follows:

**Documents Which Constitute an Integral Part of this Agreement** The following documents shall constitute integral parts of this agreement, the whole to be collectively known and referred to as the Agreement Documents or the Contract, and in the case of discrepancies among any parts of the Agreement Documents, preference shall be given in the following order:

Appendix A: Standard Clauses for NYS Contracts, Dated October 2019  
Agreement (later dates taking precedence over earlier dates)

June 29, 2022 (Third Amendment to ROA)

June 16, 2021 (Second Amendment to ROA)

May 19, 2006 (Amendment to ROA)

July 1, 2003 (ROA)

Vendor Responsibility Questionnaire, Profile, & Instructions

Affirmation of Understanding of, and Agreement Pursuant to State Finance Law §139-j(3) and §139-j(6)(b)

Certification of Compliance with State Finance Law §139-k(5)

Offeror Disclosure of Prior Non-Responsibility Determinations

Insurance Certificates

Sexual Harassment Prevention Certification Pursuant to State Finance Law 139-l

Non-Collusive Bidding Certification pursuant to State Finance Law §139-d

Resolution Accompanying Proposal (For Corporate Offerors)

Certificate of Acknowledgment (Corporation)

- d. **Waiver of Immunity** The following clause shall constitute an integral part of this agreement. Accordingly, Section 7.18 will be added to read as follows:

**Waiver of Immunity.** The contractor hereby agrees to the provisions of Section 139-a and 139-b of the New York State Finance Law which requires that upon the refusal of a person, when called before a grand jury to testify concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof or of a

public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract,

(a) such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with New York State or any public department, agency or official thereof, for goods, work or services, for a period of five years after such refusal, and

(b) any and all contracts made with the State of New York or any public department, agency or official thereof, since the effective date of this law, by such person, and by any firm, partnership, or corporation of which he is a member, partner, director or officer may be canceled or terminated by New York State without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the State of New York for goods delivered or work done prior to the cancellation or termination shall be paid.

- e. **Non-Discrimination** The following clause shall constitute an integral part of this agreement. Accordingly, Section 7.19 will be added to read as follows:

**Non-Discrimination Clause.** During the performance of this Contract, the Contractor agrees as follows:

- (a) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color or national origin, and will take affirmative action to insure that they are afforded equal employment opportunities without discrimination because of race, creed, color or national origin. Such action shall be taken with reference, but not be limited, to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retaining, including apprenticeship and on-the-job training.
- (b) The contractor will send to each labor union or representative of workers with which he has or is bound by a collective bargaining or other agreement or understanding, a notice, to be provided by the State Commission for Human Rights, advising such labor union or representative of the contractor's agreement under clauses (a) through (g) (hereinafter called "non-discrimination clauses"). If the contractor was directed to do so by the contracting agency as part of the bid or negotiation of this contract, the contractor shall request such labor union or representative to furnish him with a written statement that such labor union or representative will not discriminate because of race, creed, color or national origin and that such labor union or representative either will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment and the terms and conditions of employment under this contract shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the contractor shall promptly notify the State Commission for Human Rights of such failure or refusal.
- (c) The contractor will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commission for Human Rights setting forth the substance of the provisions of clauses (a) and (b) and such provisions of the State's laws against discrimination as the State Commission for Human Rights shall determine.

- (d) The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color or national origin.
- (e) The contractor will comply with the provisions of Sections 291-299 of the Executive Law and Civil Rights Law, will furnish all information and reports deemed necessary by the State Commission for Human Rights under these non-discrimination clauses and such sections of the Executive Law, and will permit access to his books, records and accounts by the State Commission for Human Rights, the Attorney General and the Industrial Commissioner for purposes of investigation to ascertain compliance with these non-discrimination clauses and such sections of the Executive Law and Civil Rights Law.
- (f) This contract may be forthwith canceled, terminated or suspended, in whole or in part, by the contracting agency upon the basis of a finding made by the State Commission for Human Rights that the contractor has not complied with these non-discrimination clauses, and the contractor may be declared ineligible for future contracts made by or on behalf of the State or a public authority or agency of the State, until he satisfies the State Commission for Human Rights that he has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commission for Human Rights after conciliation efforts by the Commission have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the Commission, notice thereof has been given to the contractor and an opportunity has been afforded him to be heard publicly before three members of the Commission. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by Law.
- (g) The contractor will include the provisions of clauses (a) through (f) in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to operations to be performed within the State of New York. The contractor will take such action in enforcing such provisions of such subcontract or purchase order as the contracting agency may direct, including sanctions or remedies for non-compliance. If the contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor shall promptly so notify the Attorney General, requesting him to intervene and protect the interests of the State of New York.

3. **AGREEMENT IN FULL FORCE AND EFFECT.** Except as amended by this Third Amendment to Reservoir Operating Agreement, all terms and conditions of the Reservoir Operating Agreement, as amended by the May 19, 2006 Amendment to Reservoir Operating Agreement and the June 16, 2021 Second Amendment to Reservoir Operating Agreement, shall remain unchanged. In the event of any inconsistency between the remaining terms and conditions of the Agreements and this amendment, the remaining terms and conditions of the Agreement shall be interpreted so as to give effect, to the maximum extent possible, to the provisions contained in this Third Amendment.
4. **HEADINGS.** The various headings used in this Third Amendment are inserted for convenience of reference only, do not form a part of this Third Amendment, and shall not affect the meaning or interpretation of this Third Amendment or any provision thereof.



5. **REFERENCES TO AGREEMENTS.** From and after the date hereof: (i) all references in the Reservoir Operating Agreement to "this Agreement", "hereof", "Herein", or similar terms and (ii) all references to the Reservoir Operating Agreement in each agreement, instrument and other document executed or delivered in connection with the Reservoir Operating Agreement, shall mean and refer to the Reservoir Operating Agreement as amended by the May 19, 2006 Amendment to Reservoir Operating Agreement, the June 16, 2021 Second Amendment to Reservoir Operating Agreement and this Third Amendment to Reservoir Operating Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Third Amendment to be signed by their respective duly authorized officers or representatives as of the date indicated above.

For and on behalf of:

HUDSON RIVER – BLACK RIVER  
REGULATING DISTRICT

By: 

Name: John C. Callaghan  
Title: Executive Director

For and on behalf of:

ERIE BOULEVARD HYDROPOWER, L.P.

By: 

Name: Stephen Gallagher  
Title: Chief Commercial Officer

By: 

Name: Thomas Deedy  
Title: Chief Operating Officer