

23-05-01

**RESOLUTION AUTHORIZING A FORMAL PETITION TO THE FEDERAL ENERGY
REGULATORY COMMISSION SEEKING ASSISTANCE RESOLVING A DISPUTE
REGARDING REASONABLE COMPENSATION FOR USE OF REGULATING DISTRICT
ASSETS**

WHEREAS, in a letter dated November 30, 2022, the Regulating District alerted the Federal Energy Regulatory Commission (FERC) to a dispute over obligations incorporated in the license issued to Erie Boulevard Hydropower, LP (“Erie”) to operate the E.J. West powerhouse and generating facilities (Project 2318) at the Regulating District’s Conklingville Dam (Project 12252); and

WHEREAS, Erie’s FERC license 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...*”; and

WHEREAS, the Regulating District owns fifty-six (56) feet of the seventy-one (71) feet of head supplying Erie’s E.J. West (Project 2318); and

WHEREAS, beginning in 1927, the Regulating District, Erie, and Erie’s predecessors in interest, entered into a series of Reservoir Operating Agreements through which the powerhouse owner secured the right to utilize the fifty-six (56) feet of head necessary to operate the powerhouse in exchange for an amount which compensated the Regulating District for the full value of the power thus produced by such additional head; and

WHEREAS, Erie now contends that payments made under the current Reservoir Operating Agreement are duplicative of payments Erie is obligated to make for headwater benefits assessments FERC levies pursuant to section 10(f) of the federal power act; and

WHEREAS, the Regulating District rejects Erie’s contention and has secured an appraisal valuing the Regulating District’s contribution of said fifty-six (56) feet of head to Erie’s ability to generate at the E.J. West power plant (Project 2318); and

WHEREAS, Erie has not provided its own appraisal of the value of said fifty-six (56) of head and has declined to negotiate a new agreement which appropriately values, and provides compensation for, said fifty-six (56) feet of head, leading to a dispute between the parties; and

WHEREAS, section 2.5 of the Offer of Settlement, incorporated into Erie’s FERC license through Appendix “A” of such license, requires the respective licensee to report such disputes to FERC and, if the parties have not resolved said dispute within forty-five (45) days, to petition FERC for assistance resolving said dispute; and

WHEREAS, absent the commencement of good faith negotiations between the parties on a new agreement providing appropriate compensation for Erie’s utilization of the Regulating District’s property rights, and upon the passage of the forty-five (45) day period since delivery of the Regulating District’s November 30, 2022 letter, staff seeks Board authorization to initiate a

Approved at the January 10, 2023 Board Meeting

procedure before FERC seeking assistance resolving the question whether section 10(f)'s headwater benefits assessment supplants the Regulating District's control of assets under its jurisdiction; and

WHEREAS, on December 21, 2022, the Regulating District and Erie entered into an agreement extending the current Reservoir Operating Agreement through June 30, 2023 to afford the parties additional time to resolve the dispute and to negotiate a new Reservoir Operating Agreement.

NOW, THEREFORE, BE IT RESOLVED, that staff is authorized to file a formal petition seeking FERC assistance resolving the dispute.

Approved as to form:



Robert P. Leslie
General Counsel

Motion was made by Ms. Allen and seconded by Mr. Reagan that the Resolution be approved.

Present and Voting:

<u>MEMBER</u>	<u>AYE</u>	<u>NOE</u>	<u>ABSTAIN</u>
Mr. Finkle	<u> X </u>	_____	_____
Mr. Hayes.....	<u> X </u>	_____	_____
Mr. De Witt.....	<u> X </u>	_____	_____
Mr. Bird.....	<u> X </u>	_____	_____
Ms. Allen.....	<u> X </u>	_____	_____
Mr. Reagan	<u> X </u>	_____	_____
Mr. Candido	<u> X </u>	_____	_____