

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D. C. 20426

OFFICE OF ENERGY PROJECTS

Project Nos. 12252-037 and 2318-000  
– New York  
Great Sacandaga Lake Project  
Hudson River-Black River Regulating  
District

August 16, 2023

VIA Electronic Mail

Robert Leslie, Esq.  
Hudson River - Black River Regulating District  
[rleslie@hrbrd.ny.gov](mailto:rleslie@hrbrd.ny.gov)

Subject: Request to Change Project Operations Dismissed without Prejudice

Dear Robert Leslie:

This letter is in response to your July 5, 2023 request for authorization to divert flows at the Great Sacandaga Lake Project No. 12252 (GSL Project).<sup>1</sup> You are requesting to divert flows around Erie Boulevard Hydropower, L.P.'s (Erie) E.J. West Project No. 2318<sup>2</sup> because the operating agreement between you and Erie has expired.<sup>3</sup> As discussed in more detail below, you must file an application to amend your license to change project operations in accordance with 18 C.F.R. 4.200 before we can consider your request. You are not authorized to divert flows at this time and your request is dismissed without prejudice.

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<sup>1</sup> *Hudson-River Black River Regulating Dist.*, 100 FERC ¶ 61,319 (2002) (District License).

<sup>2</sup> *Erie Boulevard Hydropower, L.P.*, 100 FERC ¶ 61,322 (2002) (E.J. West License).

<sup>3</sup> The operating agreement expired on June 30, 2023.

## **Background**

The E.J. West and GSL Projects are located on the Sacandaga River within New York's Adirondack State Park in Saratoga, Fulton, and Hamilton counties, New York, and create a single unit of development whereby water from the GSL Project reservoir (Great Sacandaga Lake) flows into the generating facilities of the E.J. West Project. On September 25, 2002, the Commission issued an original license for the GSL Project and a new license for the E.J. West Project, and approved an Offer of Settlement (Settlement Agreement),<sup>4</sup> which included provisions related to the GSL Project, E.J. West Project, and three other projects owned by Erie located further downstream on the Sacandaga and Hudson Rivers.<sup>5</sup>

On January 25, 2023, you filed a petition requesting the Commission declare that Erie must maintain a property interest in 56 feet of hydraulic head created by the GSL Project. On January 27, 2023, Erie filed a petition requesting the Commission declare that section 10(f) of the Federal Power Act (FPA)<sup>6</sup> preempts charges assessed against Erie by you for releases from the GSL Project and that you would violate your license should you divert all water around the E.J. West Project or significantly change the timing of releases without Commission authorization.

On June 15, 2023, the Commission issued an Order on Petitions for Declaratory Order (Declaratory Order).<sup>7</sup> The Declaratory Order granted, in part, and denied, in part, your January 25, 2023 petition and Erie's petition. Relevant to your July 5, 2023 request, the Declaratory Order explains that you failed to demonstrate that diverting water from the E.J. West Project without prior Commission approval would not violate your license and the Commission's order approving the Settlement Agreement. The Declaratory Order said that if you seek to change your operation in a manner that is inconsistent with how the project has operated under the current license, you must first obtain Commission

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<sup>4</sup> E.J. West License, 100 FERC ¶ 61,322 (2002) (order issuing new license for the E.J. West Project) (E.J. West License); District License, 100 FERC ¶ 61,319 (order issuing original license for the GSL Project); *Erie Boulevard Hydropower, L.P.*, 100 FERC ¶ 61,321 (2002) (Settlement Order). Nearly 30 parties signed the settlement, including state and federal agencies, conservation organizations, and local recreation-oriented organizations. *Id.* P 8 n.12.

<sup>5</sup> Settlement Order, 100 FERC ¶ 61,321 at P 3. The projects, from upstream to downstream, include the Stewart's Bridge Project No. 2047; Hudson River Project No. 2482; and Feeder Dam Project No. 2554.

<sup>6</sup> 16 U.S.C. § 803(f).

<sup>7</sup> *Hudson River-Black River Regulating Dist.*, 183 FERC ¶ 61,187 (2023).

approval.<sup>8</sup> An amendment proceeding would allow the Commission to evaluate whether the project is capable of safely operating in different manner, whether a different operation would have impacts on the environment, and whether such operation is in the public interest.<sup>9</sup>

### **Request for Authorization to Divert Flows**

Your July 5, 2023 request states that Erie has elected to allow the operating agreement to expire and that you must now provide the same benefit to Erie without compensation, and that you are in violation of New York State Public Authorities Law. You state that section 3.8 of the Settlement Agreement provides for situations in which both generating units at the E.J. West Project are offline, and, to date, neither Erie nor the Commission has expressed concern with your performance under this provision. You further note that nothing in the Settlement Agreement or your license restricts the duration of the requested diversion or restricts when Erie can request to take its units offline. You state that you routinely exercise the GSL Project's low level outlet or "Dow valves," which you would use to bypass flows around the E.J. West Project, to ensure the valves are ready for continuous use.

Your filing also discusses other issues that were included in the Declaratory Order, which are tangential to your request for authorization to divert flows and bypass generation at the E.J. West Project. Lastly, your filing states a petition for rehearing of the Declaratory Order will follow.<sup>10</sup>

### **Conclusion**

Your filing does not provide sufficient information or justification consistent with the Commission's regulations to support an order authorizing you to divert flows around the E.J. West Project. Therefore, we dismiss your July 5<sup>th</sup> request without prejudice. The Declaratory Order explains that the Commission would need to evaluate whether the project is capable of safely operating in a different manner, whether a different operation would have impacts on the environment, and whether such operation is in the public interest. While you briefly reference some of these topics, you provide no analysis nor

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<sup>8</sup> *Id.* P 51.

<sup>9</sup> *Id.*

<sup>10</sup> On July 14, 2023, you filed a Request for Rehearing. *See* FERC Accession No. 20230714-5213. This request is being reviewed under a separate proceeding (P-12252-038).

supporting information. In addition, you did not consult with the resource agencies and stakeholders on your request, as required.

In order for the Commission to adequately evaluate your proposal, you would need to file a non-capacity amendment application pursuant to 18 C.F.R. § 4.201 of the Commission's regulations. Your amendment application must provide an analysis of effects of the proposed action, both environmentally and on dam safety. This includes an environmental report (similar to an Exhibit E)<sup>11</sup> and a dam safety assessment that demonstrates the Dow valves are capable of safely being operated in the proposed manner. A dam safety assessment for the long-term use of the Dow valves has never been performed. Lastly, you must consult on the proposed amendment with the appropriate resource agencies and stakeholders as required by the Commission's regulations.<sup>12</sup>

Thank you for your cooperation and I look forward to working with you on this matter. If you have any questions regarding this letter, please contact Jeremy Jessup at (202) 502-6779 or [Jeremy.Jessup@ferc.gov](mailto:Jeremy.Jessup@ferc.gov).

Sincerely,

CARLISA  
LINTON

Digitally signed by  
CARLISA LINTON  
Date: 2023.08.16  
07:14:37 -04'00'

CarLisa Linton  
Director  
Division of Hydropower Administration  
and Compliance

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<sup>11</sup> See *Id.* § 4.41(f).

<sup>12</sup> See *Id.* § 4.38.

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