



Hudson River - Black River Regulating District

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Governor

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Chairman

JOHN C. CALLAGHAN
Executive Director

November 8, 2023

Via email to: jacob.pollack@brookfieldrenewable.com

Jacob Pollack, Esq.
General Counsel
Erie Boulevard Hydropower, L.P
C/O Brookfield Renewable
200 Liberty Street, 14th Floor
New York, New York 10281

**Re: Demand for Payment
Project Nos. 12252, 2318**

Dear General Counsel Pollack:

Erie Boulevard Hydropower L.P (“Erie”) ceased to make payments upon the July 1, 2023 expiration of the agreement through which Erie and the Regulating District have, over the last ninety-five years, split the revenue generated through use of the parties’ respective properties; Erie’s E.J. West hydroelectric plant and the Regulating District’s Conklingville Dam and Great Sacandaga Lake.

Negotiation toward a replacement agreement, which has already dragged on for several years, has reached an impasse. The Regulating District continues to have every intention of pursuing a new reservoir operating agreement with Erie. This new agreement will be the next in the long series of reservoir operating agreements, dating back to the 1927 real property transaction through which Erie’s predecessor agreed to share generation revenue in exchange for use of the state land underlying the impoundment and the state’s construction of such impoundment at Conklingville. Erie cannot dispute that it acquired only those interests in the E.J. West plant owned or controlled by the preceding owners of such interests. Neither can Erie dispute that the Regulating District did in fact construct the impoundment and reservoir required of it as part of that real estate transaction. Lastly, Erie cannot dispute that, contrary to Erie’s claim, FERC’s final ruling on October 19, 2023 clarified that fees paid by Erie to the Regulating District under the reservoir operating agreement are not duplicative of, but rather in addition to, the headwater benefits charge Erie pays to the District pursuant to FPA section 10(f). That Erie continues to refuse to meet the conditions imposed through the chain of title leaves the Regulating District with no choice but to enforce those terms in the courts.

As a public authority in New York State, the Regulating District is required under Public Authorities Law §2897(3) to receive fair market value for its assets. Accordingly, in preparation for a new agreement with Erie, the Regulating District commissioned and shared with Erie an appraisal to establish

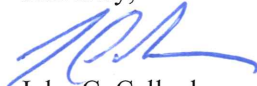
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the value of the Regulating District's contribution to Erie's ability to generate electricity at Conklingville. Based on the negotiated transaction Erie's predecessor reached with the Regulating District's predecessor ninety-five years ago, the appraisal computes Erie's obligation to be \$2.503 million per year, assuming Erie intends to relicense in 2042. Pursuant to the terms of the expired agreement, Erie paid the required fee due in twelve equal installments. For the current fiscal year, these payments would have totaled \$208,583.33 monthly, with \$834,333.33 now past due for the months of July, August, September, and October. Demand is hereby made that Erie immediately remit \$834,583.33 for the months of July-October, 2023, and re-commence payment of such installments. We note that any new negotiated contract must necessarily reflect fair market value of the benefit received by Erie, assuming it intends to relicense the plant, as determined by the previously supplied appraisal.

Failure to remit payment within 30 days of this letter allows for the imposition of interest and the failure to provide payment within 95 days of that notice allows for a 22% collection fee to be added to this debt as directed by State Finance Law §18. In the event Erie fails to pay this debt and the State of New York commences an action, we will demand judgment with interest at the statutory rate, plus court costs and any costs related to service of process, together with any further relief as may be proper.

Sincerely,



John C. Callaghan
Executive Director