



## Hudson River - Black River Regulating District

KATHY HOCHUL  
Governor

MARK M. FINKLE  
Chairman

JOHN C. CALLAGHAN  
Executive Director

December 19, 2023

Via email to: [jacob.pollack@brookfieldrenewable.com](mailto:jacob.pollack@brookfieldrenewable.com)

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200 Liberty Street, 14<sup>th</sup> Floor  
New York, New York 10281

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

Jacob:

I am writing to follow-up on Executive Director John Callaghan's November 8, 2023 demand letter (attached). To date, Erie Boulevard Hydropower L.P ("Erie") has failed to remit payment as demanded therein. To secure payment and/or avoid Erie's unjust enrichment, the Regulating District is left with no choice but to pursue its claim through the courts. This is the avenue promised in Director Callaghan's letter and suggested by the Commission. To that end, the Regulating District has engaged in discussions with the New York State Office of the Attorney General and, barring payment of the amount indicated below to the Regulating District on or before COB Tuesday, January 16, 2024, will refer the matter to that office with a request for immediate prosecution of the claim.

As described in Director Callaghan's letter, the 1927 real property transaction and the agreement therein to share generation revenue in exchange for the Regulating District's construction of the impoundment at Conklingville, supply the Regulating District with a strong quasi-contract claim against Erie based upon:

- The Regulating District's continued provision of services to Erie in good faith;
- Erie's acceptance of such services;
- Ample evidence that the Regulating District expects to be paid for such services; and
- Erie's failure to provide the compensation demanded.

The series of agreements between the Regulating District, Erie and Erie's predecessors in interest, dating back to 1927, provide ample proof that Erie expressly, or at worst implicitly, requested and continues to request the use of the fifty-six feet of head created by the Regulating District's construction of the Conklingville Dam. Further, such agreements establish conclusively that such services/use of assets

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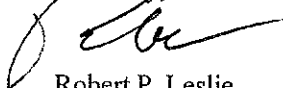
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was and is performed and accepted with the understanding by both sides that a fee obligation has been created. In light of the Public Authorities Law §2897(3) requirement that the Regulating District secure fair market value for the use of its assets, the Regulating District commissioned and shared with Erie an appraisal establishing the reasonable value for such use of the Regulating District's assets at \$2,503,000 per annum. Neither commenting upon said appraisal, nor supplying one of its own, Erie acknowledged its obligation to pay a fee for the services rendered by offering a below market payment of merely \$250,000 per annum.

Erie must not assume that the Regulating District will continue to render such services and/or permit continued use of its assets without fair market value compensation. It is beyond dispute that, but for the head created by the Regulating District's Conklingville Dam, Erie's E.J. West hydroelectric plant could not generate electricity at the rate or consistency presently achieved. The expired agreement identifies the parties, subject matter, and essential terms of the implied contract. For instance, said agreement governed the Regulating District's relationship with Erie and Erie's predecessors in interest, clearly establishing the respective responsibilities required of each and specifying that the fee due would be paid in twelve equal installments. As outlined in Mr. Callaghan's letter, the Regulating District continues to fulfill its obligations under the expired contract and demands only that Erie commence making monthly installment payments of \$208,583.33 to compensate the Regulating District's continued performance of such obligations. The sum of \$1,251,499.98 is now past due for the months of July, August, September, October, November and December, 2023. An additional \$208,583.33 (\$1,460,083.31 in total) will be due by mid-January 2024. As long as Erie continues to utilize the head created by the Regulating District's dam and reservoir to generate hydroelectric power it sells, Erie should expect to make continued payments of \$208,583.33, due and payable on the fifteen of each month, pending completion of a subsequent appraisal establishing then fair market value.

Finally, as also noted in Mr. Callaghan's November 8<sup>th</sup> letter, should pursuit of a remedy in the courts be required, the State of New York will seek judgment with interest at the statutory rate, the 22% collection fee to be added to this debt as directed by State Finance Law §18, plus court costs and any costs related to service of process, together with any further relief as may be proper.

Sincerely,



Robert P. Leslie  
General Counsel

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