

24-07-03

**RESOLUTION AUTHORIZING THE PURCHASE OF THE STILLWATER HYDROELECTRIC PLANT PURSUANT TO THE GROUND LEASE AND WATER USAGE AGREEMENT WITH STILLWATER ASSOCIATES**

**WHEREAS**, Chapter 753 of the Laws of 1985, authorized the Regulating District to lease 0.6 acre of land (tax parcel 023.-1-6.1.) off of Necessary Dam Road, Town of Webb, Herkimer County, New York (the "Site"), to Stillwater Associates; and

**WHEREAS**, the Site sits adjacent to the Stillwater Dam, a 330-foot long 48-foot high poured concrete dam structure and the resulting Stillwater Reservoir, an 8.9 mile long body of water with a surface area of 6,490 acres and a storage capacity of 108,356 acre-feet at an elevation of 1,679.3 feet, both said Dam and Reservoir owned and operated for the State of New York by the Regulating District; and

**WHEREAS**, pursuant to a March 14, 1984 Order, the Federal Energy Regulatory Commission granted the Regulating District an exemption from licensing to operate a small hydroelectric project (P-6743) of 5 megawatts or less at the Site; and

**WHEREAS**, the Regulating District and Stillwater Associates entered into that certain Ground Lease and Water Usage Agreement, dated as of October 21, 1985, as subsequently amended from time to time, through which the Regulating District agreed to lease a portion of the Site to Stillwater Associates and Stillwater Associates agreed to construct and operate a hydroelectric plant upon the Site under the restrictions imposed by the FERC License exemption; and

**WHEREAS**, the Original Ground Lease and Water Usage Agreement, dated as of October 21, 1985, was set to end on December 31, 2016 (the "*Original Term*"); and

**WHEREAS**, the parties did not agree as to terms and conditions for an additional fifteen (15) year Term at the end of the Original Term and thus, under the Original Ground Lease and Water Usage Agreement, the Term of the Original Ground Lease and Water Usage Agreement was extended to December 31, 2021 (the "*Extended Term*"), later extended to March 31, 2022, June 30, 2022, September 30, 2022, December 31, 2022, March 30, 2023, June 30, 2023 and then to September 30, 2023; and

**WHEREAS**, the parties have not been able to agree upon rent and other terms and conditions extending the Term past the Extended Term, thus requiring, pursuant to provisions in the original agreement, the District to purchase the Plant at its Appraised Value; and

**WHEREAS**, the Plant is a one story hydroelectric facility containing 1,296+/- square feet of gross building with a 1.8 megawatt Allis Chambers vertical shaft turbine with a rated flow of 760 cubic feet per second for a rated head of 30 feet and a rated speed of 212 revolutions per minute and Siemens generator (with 4,160-voltage, 1.8 megawatt capacity, 3-phase / 60 Hertz frequency at a speed of 212 revolutions per minute) on a 0.6+/- acre site located at the west end of Necessary Dam Road at the east end of the main dam for the Stillwater Reservoir in the Town of Webb, Herkimer County, New York; and

**WHEREAS**, the building covering the Plant sits atop a 48'+/- deep shaft, with the generator located on the floor of the shaft and the turbine located in a pit under the generator with monitoring equipment and a small office located on the top level of the shaft within the building enclosure at ground level; and

**WHEREAS**, during the negotiating process, the Regulating District and Stillwater Associates shared with each other the valuation its respective appraisers initially determined to be the fair market value of the Stillwater Hydroelectric Plant; and

*Approved at the March 12, 2024 Board Meeting*

**WHEREAS**, pursuant to provisions in the original agreement, due to the differences in those respective valuations, the parties commissioned a third appraiser upon recommendation of the appraisers for the parties, to determine the plant's appraised value; and

**WHEREAS**, following receipt of that third appraisal, the parties have negotiated a purchase price of \$1,263,000, which the Regulating District believes represents the current fair market value of the Stillwater Hydroelectric Plant determined by the third appraiser; and

**WHEREAS**, the Regulating District agrees to pay and Stillwater Associates agrees to accept \$1,263,000 in exchange for said plant; and

**WHEREAS**, in addition to the determined value, the Regulating District agrees to pay to Stillwater Associates the Regulating District's one-half share of the cost to produce the document review and appraisal prepared by CNY Pomeroy Appraisers, Inc. (\$7,900); and

**WHEREAS**, the Regulating District shall submit all closing requirements in writing to Stillwater Associates. Stillwater Associates shall cooperate with the NYS Attorney General by providing at the Regulating District's expense any abstract of title, copy of any title insurance policy, existing survey and any or all documentation and information relating to the Stillwater Hydroelectric Plant within Stillwater Associates' possession or reasonably obtainable by Stillwater Associates. Stillwater Associates shall secure and deliver any affidavits, satisfactions, releases and conveyances as deemed necessary by the NYS Attorney General for the purpose of disposing of objections to title to the Stillwater Hydroelectric Plant. If solicited by the NYS Attorney General, Stillwater Associates shall execute and deliver an Affidavit of Title in the form prescribed by the NYS Attorney General; and

**WHEREAS**, Stillwater Associates shall convey absolute title to the Stillwater Hydroelectric Plant free and clear of all liens and encumbrances other than the following:

Existing easements, if any, for the construction, operation and maintenance of public service electric, telephone, telegraph and pipe lines, or railroads and other transportation corporations or the right of others in any public road, public street, public highway or waterway, running through or along the Stillwater Hydroelectric Plant; and

**WHEREAS**, Stillwater Associates owns and has the power to sell, transfer and convey all right, title and interest in and to the Stillwater Hydroelectric Plant; and

**WHEREAS**, the Regulating District is authorized under Section 15-2111 of the Environmental Conservation Law to acquire this personal and real property by purchase; and

**WHEREAS**, there are no actions, judgments, suits or proceedings existing or pending (or, to the knowledge of Stillwater Associates, threatened) against Stillwater Associates or the Stillwater Hydroelectric Plant which can reasonably be expected to have an adverse effect upon Stillwater Associates' performance of its obligations under the Agreement; and

**WHEREAS**, Stillwater Associates shall deliver possession at closing. At closing, no one other than Stillwater Associates shall be in possession of any portion of the Stillwater Hydroelectric Plant. Stillwater Associates shall remove or cause to be removed all encroachments by adjoining owners or others prior to closing; and

**WHEREAS**, there are no leases, tenancies, or other rights of occupancy, timber contracts, oil, gas or mineral leases, or other contracts in effect or under negotiation with respect to the Stillwater Hydroelectric Plant, except as listed below:

**NONE**; and

*Approved at the March 12, 2024 Board Meeting*

**WHEREAS**, Stillwater Associates has no knowledge that hazardous or toxic substances have been generated, treated, stored, used, disposed of or deposited in or on the Stillwater Hydroelectric Plant. Stillwater Associates has no knowledge that there either have been in the past or are presently any underground storage tanks, septic tanks or oil or gas wells, or water wells, dump sites, pollution or contamination of the soil or water located within, upon or under the Property, except as listed below:

**NONE**; and

**WHEREAS**, there are no reports or investigations commissioned by Stillwater Associates or in Stillwater Associates' possession relating to hazardous or toxic substances at the Stillwater Hydroelectric Plant except as listed below:

**NONE**; and

**WHEREAS**, Stillwater Associates shall deliver the Stillwater Hydroelectric Plant free of personal property and trash. If the Regulating District, upon inspection of the Stillwater hydroelectric Plant, finds that there is any such property or trash on the Stillwater hydroelectric Plant property, including but not limited to any dumps, debris or trailers, the Regulating District shall provide Stillwater Associates with a list of same. Stillwater Associates shall remove all of same from the Stillwater Hydroelectric Plant prior to closing; and

**WHEREAS**, the parties agree that no broker brought about this sale and Stillwater Associates agrees to hold the Regulating District harmless and to indemnify the Regulating District for any claims for brokers' commissions arising out of this transaction; and

**WHEREAS**, Stillwater Associates agrees that the Stillwater Hydroelectric Plant shall remain as it is on the date first written above, until closing, and that the Stillwater Associates will prevent and refrain from any use of the Stillwater hydroelectric Plant for any purpose or in any manner which would adversely affect the Stillwater Hydroelectric Plant, including, but not limited to: a) cutting or removal of trees or vegetation; b) disturbing or removing of soil, rock or minerals; and c) dumping or depositing of materials of any kind; and

**WHEREAS**, Stillwater Associates will pay and discharge all taxes, assessments and municipal water and sewer charges which are liens against said Stillwater Hydroelectric Plant at the time of closing. The Regulating District agrees to reimburse Stillwater Associates the prorated share of any current taxes, assessments and municipal water and sewer charges (except metered charges or charges based upon use), as of the closing, above and upon completion of the Regulating District's audit and application process, which the Regulating District completes subsequent to closing. The obligation of Stillwater Associates to pay and discharge taxes and the Regulating District to pay a tax proration shall not merge and will survive closing.

**WHEREAS**, from the date of the Agreement, the Regulating District, through its employees, agents and contractors, may enter upon the Stillwater Hydroelectric Plant, after reasonable notice to Stillwater Associates, for the purpose of making surveys, inspections and investigations as the Regulating District deems appropriate, including, without limitation, making an environmental assessment of the soils, waters and improvements, if any, on the Stillwater Hydroelectric Plant.

**WHEREAS**, if in its sole discretion the Regulating District determines the environmental conditions are unacceptable, the Regulating District may terminate the Agreement; in such case, the Agreement shall become void and neither party shall have any liability to the other under the Agreement or the Ground Lease and Water Usage Agreement; and

*Approved at the March 12, 2024 Board Meeting*

**WHEREAS**, it is further mutually understood and agreed, anything to the contrary notwithstanding, that if, in the opinion of the Regulating District, it is necessary, or desirable, to acquire the Stillwater Hydroelectric Plant by use of the power of eminent domain pursuant to law, title to said lands may be so appropriated by the Regulating District in lieu of acquisition by conveyance from said Stillwater Associates and in such event upon the vesting of title in the Regulating District as provided by law, the Agreement shall become an Agreement of Adjustment of the claim of Stillwater Associates for compensation for the value of the property so appropriated, and shall constitute an agreement that the value of the property so appropriated shall be and is hereby fixed and determined at the sum of \$1,263,000.00, without interest, moving expenses, supplemental relocation payments, and incidental expenses (except pro-rationing of taxes) and as payment in full of any and all claims arising from the use of the power of eminent domain. All covenants of the Agreement shall apply, in case of appropriation, with respect to disposition of title, as that title and those objections are found by the Attorney General to have existed at the time of appropriation. If a conflict of title is found by the Attorney General, Eminent Domain Procedure Law §304(E) shall apply.

**WHEREAS**, after signatures are affixed hereto and upon approval by the Attorney General and the State Comptroller, as necessary, the Agreement shall be binding upon the parties, their heirs, personal representatives, assigns and successors in interest; and

**WHEREAS**, the Agreement contains all of the agreements of the parties hereto. There are no promises, agreements, terms, conditions, warranties, representations or statements other than those contained herein. The Agreement may not be changed orally and it may not be modified in writing unless and until the written modification is approved by the Attorney General and the State Comptroller.

**NOW, THEREFORE BE IT RESOLVED**, the Hudson River – Black River Regulating District Board hereby authorizes the Executive Director to purchase from Stillwater Associates, the plant for a sum not to exceed one million two hundred sixty-three thousand and 00/100 dollars (\$1,263,000.00); and

**BE IT FURTHER RESOLVED**, an additional \$7,900 will be conveyed to Stillwater Associates at the time of closing representing fifty percent of costs associated with the third independent appraiser; and

**BE IT FURTHER RESOLVED**, the Regulating District will make every effort to consummate the transaction before the end of the 2023-2024 Fiscal year on June 30, 2024; and

**BE IT FURTHER RESOLVED**, Stillwater Associates shall remain in possession of the plant until consummation of the transaction and the Executive Director is authorized to extend, through agreement with Stillwater Associates, Stillwater Associates' possession of the plant for a period not extend beyond three months following consummation of the transaction in order to afford the Regulating District time to secure a successor plant operator.

Approved as to form:



Robert P. Leslie  
General Counsel

Motion was made by Mr. Hayes and seconded by Mr. Candido 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. DeWitt.....	_____	_____	_____
Mr. Bird.....	_____	_____	_____
Mr. Candido.....	<u>  X  </u>	_____	_____
Mr. Reagan.....	<u>  X  </u>	_____	_____
Ms. Allen.....	<u>  X  </u>	_____	_____