

**HUDSON RIVER-BLACK RIVER REGULATING DISTRICT  
BOARD MEETING –APRIL 7, 2009  
CROGHAN, NY– 10:30 A.M.**

**CALL TO ORDER**

Chairman Klein called the regularly scheduled meeting to order at 10:55A.M.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**Present:** Chairman Philip W. Klein; Second Vice Chair Ronald Pintuff; Board members; John K. Bartow, Jr.; and Patrick B. Dugan; Executive Director Glenn A. LaFave; General Counsel Robert Leslie; Chief Engineer Robert S. Foltan; Chief Fiscal Officer Richard J. Ferrara; Hudson River Area Administrator Michael A. Clark; Black River Area Administrator Carol L. Simpson; and other Regulating District staff.

**Excused:** Anne McDonald, Pamela S. Beyor and Audrey Dunning

**MOTION TO ADOPT OR REVISE MEETING AGENDA**

Mr. Bartow moved to adopt the meeting agenda. Mr. Dugan seconded it and the motion was unanimously approved.

**INTRODUCTION OF GUESTS**

Chairman Klein introduced John Elmer, General Manager of Brookfield Power. Mr. Elmer made a presentation to the Board.

**MOTION FOR EXECUTIVE SESSION**

None

**PUBIC COMMENT PERIOD**

None

**APPROVAL OF MEETING MINUTES**

Mr. Pintuff moved to table the motion to approve the March 10, 2009 Operations Committee minutes. Mr. Bartow seconded the motion and it was unanimously approved.

Mr. Pintuff moved to approve the minutes of the March 10, 2009 regular Board Meeting. Mr. Bartow seconded it and the motion was unanimously approved.

## **EXECUTIVE DIRECTOR'S REPORT**

Mr. LaFave stated as the snow melts that the Hudson Area Administrator and at times General Counsel and he will inspect access permit areas where either the permit holder has requested a site visit or there is an upcoming resolution conference with the Executive Director or an encroachment or other violation of the current permit system rules.

Again this year, Mr. LaFave noted, he and the Black River Area Administrator attended the 20<sup>th</sup> Annual Government Conference, sponsored by New York State Tug Hill Commission. He noted this is an excellent conference which provides opportunities to participate in worthwhile training and network with elected officials, other agencies and stakeholders.

Mr. LaFave noted the Regulating District's Technology Team, consisting of the Executive Director, CFO, Black River Area Administrator, Hudson River Area Administrator, Sacandaga Field Office Field Assistant and Black River Area Administrative Assistant, met for its semiannual meeting. Also, in attendance was the General Counsel who discussed the Regulating District's Computer Technology Policy and Land Surveyor who discussed "paperless" mapping and record keeping. Mr. LaFave said there is also research being done as to e-commerce utilization.

Mr. LaFave reported that an updated Timeline for Permit Rulemaking is not included in this month's Board packet, as there have been no changes from the timeline presented to the Board for the January 14, 2009 Board Meeting. Mr. LaFave said he will update the Board when he receives information from NYS Department of Environmental Conservation.

## **COMMITTEE BUSINESS**

### **(a) Permit System – Mr. Pintuff**

**(1) Old Business -None**

**(2) New Business - None**

### **(b) Governance – Mr. Bartow**

**(1) Old Business –None**

**(2) New Business**

### **(A) Discussion of 2008 Annual Report – Mr. LaFave**

Mr. LaFave said that all Board members received a copy of the 2008 Annual Report of the Hudson River-Black River Regulating District for review. Mr. Pintuff commented that this report was the most professional he has seen in his tenure on the Board and congratulated Mr. LaFave and staff for putting it together. The approval of the 2008 Annual Report will be at the May 12, 2009 Board Meeting.

**(B) Counsel Report – Mr. Leslie**

Mr. Leslie noted that his intention was to convene a meeting with the Executive Director and Executive level staff at Department of Environmental Conservation at the time of the writing of his report, however, that meeting was not accomplished prior to the Board Meeting

Mr. Leslie said he met with John Henry and Mike Sterthous of Whiteman, Osterman & Hanna and they are moving forward regarding the Niagara Mohawk challenges to the Access Permit System. Mr. Leslie said he is still working with the Attorney General's contract approval unit regarding approval of that contract.

Mr. Leslie reported that there has not been a response from the Attorney General on the Regulating District's request that they represent the District in the personal injury brought by Ms. Chera.

**(c) Finance Committee – Mr. Pintuff**

**(1) Approval of Expenses**

Mr. Pintuff asked for a motion to approve the expenses. Mr. Bartow made a motion to approve the expenses in the amount of \$134.70. Mr. Dugan seconded the motion. There being no discussion the motion was approved.

**(2) Old Business – None**

**(3) New Business**

**(A) Resolution Rescinding Resolution 07-32-05 – Mr. LaFave**

Mr. LaFave stated that Resolution 07-32-05 was a resolution to establish an accounting policy for the application of E.J. West water fees. The Board adopted this resolution based on certain legal determinations made by the Federal Energy Regulatory Commission (FERC). Since the November 28, 2008 U.S. Court of Appeals decision ruled against FERC the resolution is no longer relevant and it is recommended that the Board rescind the resolution.

Mr. Pintuff requested that the Resolution be amended to correct a typographical error in the last paragraph starting, "Now Therefore...." that the date be changed to May 14, 2007.

Mr. Bartow moved to approve the amended Resolution. Mr. Klein seconded it, and the resolution was approved.

**(B) CFO's Report – Mr. Ferrara**

Mr. Ferrara said the great majority of his time has been spent in two areas, budget development and refinement and the development of the Regulating District's internal control program.

Mr. Pintuff stated as Chair of the Finance Committee he wanted to thank Mr. Ferrara and his staff for a job well done in putting together the drafts for the preliminary budget and answering the questions from the Board.

**(d) Operations Committee – Chairwoman Dunning (In the absence of Chairwoman Dunning, Mr. Klein served as Acting Chair.)**

**(1) Old Business**

**(A) Discussion of Hudson River Area Capital Projects – Mr. Clark**

Mr. Clark stated there are two proposed capital projects in the Hudson River area. The first is a new pole barn for storage of large structures, equipment and coffer dam cells at the Conklingville Dam. He said also proposed is the remodeling of the pre-existing garage maintenance facility at the Conklingville Dam. Mr. Clark said the second capital project relates to the Indian Lake House and the examination of alternatives of rehabilitating or replacing the house.

After a discussion by the Board on the price of the concrete for the Conklingville Dam proposed project, Chairman Klein asked Mr. Clark to provide the Board with further information on that cost.

The Board discussed the proposed Indian Lake House project relating to the cost of the septic system and if there is any historical significance to the house since it is over 100 years old. Chairman Klein requested staff research the historical significance question and report back to the Board with their findings.

**(B) Discussion of Black River Area Capital Projects – Ms. Simpson**

Ms. Simpson said there are two proposed capital projects in the Black River Area one is for a new storage building at the Black River Field Office (BRFO). She noted this will be built across from the BRFO building. Ms. Simpson said the second proposed capital project is the replacement of the septic system at BRFO.

The Board discussed the costs of the projects.

**(C) Motion to Accept Three (3) Year Capital Plan – Mr. Foltan**

The Operations Committee did not have a quorum present therefore the Motion to Accept Three (3) Year Capital Plan will be heard at the May 12, 2009 Board meeting.

**(2) New Business**

**(A) Motion Authorizing the Solicitation of Statement of Qualifications from Engineering Consultants for the Completion of the Second Consultant's Safety Inspection Report for Conklingville Dam – Mr. Foltan**

Mr. Foltan said this inspection occurs every five years and since the last inspection occurred in the beginning of 2005 the Regulating District has it on the schedule to be completed this year. Mr. Foltan stated that through the request for qualifications the Regulating District will solicit statements of qualifications from New York State licensed engineers and engineering consultants to evaluate and select a firm that possesses the qualifications and experience to perform a Federal Energy Regulatory Commission (FERC) Part 12 independent consultant safety inspection of the Conklingville Dam. Mr. Foltan said it is anticipated that a notice to proceed will be given by September of 2009 and the estimated probable cost will be \$20,000 to complete the safety inspection.

Mr. Pintuff made a motion Authorizing the Solicitation of Statement of Qualifications from Engineering Consultants for the Completion of the Second Consultant's Safety Inspection Report for Conklingville Dam. It was seconded by Mr. Dugan and without any objections, the Board unanimously approved.

**(B) Chief Engineer's Report - Mr. Foltan**

Mr. Foltan stated his report as follows; precipitation in both the Hudson and the Black River area during the month of March was below normal. He noted, although, precipitation was below normal in both areas due to some warmer weather and a somewhat earlier than historic average start for spring runoff, the inflow to all of the reservoirs was above average during that period of time. Mr. Foltan said since the writing of his report to the Board and throughout the three weeks at the end of March, all the reservoirs have been refilling, as now a majority of the snow has been running off. He said staff continues to collect snow depth measurements which allows him to adjust releases accordingly so that reservoirs will be refilled when the spring runoff ceases.

**(C) Hudson River Area Administrator Report – Mike Clark**

Mr. Clark reported as the result of a court decision a camp in the town of Day that has been encroaching on New York State land has been demolished and removed from state land. He said staff from the Sacandaga Field office and the Conklingville Dam tore the structure down and disposed of the remains. Mr. Clark said the structure had been on the land for about 30 years. Mr. Clark reported he attended the Great Sacandaga Lake Advisory Council meeting and the Technology Committee meeting this month. He noted that he and the Land Surveyor continue the ongoing project of assembling a digital base map of the Great Scandaga and will provide a demonstration of this project to the Board when it is finalized.

**(D) Black River Area Administrator Report – Carol Simpson**

Ms. Simpson said there is a correction in her report regarding the Technology Committee meeting. The meeting held was the semi-annual not a bi-annual committee meeting in Old Forge. Ms. Simpson noted staff has been busy addressing spring and summer projects, however snow surveys will continue for the next few weeks.

Mr. Pintuff thanked Ms. Simpson and her staff for an excellent program in celebration of the Hudson River-Black River Regulating District’s anniversary held in Watertown.

**BOARD BUSINESS**

**(1) Old Business – None**

**(2) New Business**

**(A) RESOLUTION DIRECTING STAFF TO SOLICIT PROPOSALS IN ANTICIPATION OF HUDSON RIVER AREA REAPPORTIONMENT DUE TO U.S. COURT OF APPEALS D.C. CIRCUIT COURT DECISION IN ALBANY ENGINEERING CORP. V. FERC**

Mr. Leslie said the Regulating District pursuant to state statute for the last 80 years has apportioned costs among various downstream beneficiaries. He said when the Regulating District accumulated a FERC license for the facilities at Conklingville the Regulating District worked with FERC and pursuant to the Regulating District’s state statutory authority continued to assess the portion of costs among the downstream beneficiaries. Mr. Leslie said FERC was in agreement with the Regulating District’s method of apportioning and assessing the costs as appropriate. Mr. Leslie stated one of the downstream beneficiaries challenged that methodology, basically indicating that there was a need to collect Regulating District costs only from certain beneficiaries and doing so only using authority under the Federal Power Act. He said FERC essentially disagreed with that complainant and that complainant then appealed up through the Court of Appeals D.C. Circuit. The D.C. Circuit sided with the complainant rather than with FERC. Mr. Leslie indicated as a result the methodology which the Regulating District has historically used is no longer available and the Regulating District now has to recoup costs through the Federal Power Act.

Mr. Leslie noted in a prior meeting the Board had awarded staff authority to hire a consultant to figure out what the Federal Power Act 10f costs are, the interest, appreciation and maintenance expenses. Mr. Leslie said the remaining costs are those which cannot be assessed to the Federal Power Act Section 10f beneficiaries. He noted state statutory authority is still available to the Regulating District to apportion and assess the balance of costs which cannot be recouped under the Federal Power Act; however the Regulating District must figure how to apportion those costs among the non-hydropower beneficiaries. Mr. Leslie said the resolution before the Board today is to solicit proposals to hire a consultant who can help the Regulating District figure out who should be assessed and how to apportion those costs among those parcels of real estate and public corporations identified.

Mr. LaFave said he recommended to Chairman Klein that because this issue crosses into a number of committees such as, legal, operations, engineering and financial it should be addressed as Board business.

The Board discussed the resolution.

Chairman Klein asked for a motion to add language referencing NY ECL identifying parcels of real estate benefitted and to adopt the amended Resolution Directing Staff to Solicit Proposals in Anticipation of Hudson River Area Reapportionment Due to U.S. Court of Appeals D.C. Circuit Court Decision in Albany Engineering Corp. v. FERC. Mr. Dugan moved to approve the resolution with noted changes. Mr. Pintuff then seconded it and without any objections, the Board unanimously approved.

## **BOARD MEMBER QUESTIONS AND COMMENTS**

There were no Board member questions or comments.

## **MOTION FOR NEXT BOARD MEETING**

A motion was made by Mr. Bartow for the next Board meeting to be held on Tuesday, May 12, 2009 at the Johnstown Holiday Inn, 308 North Comrie Avenue, Johnstown, NY at 10:00 A.M. Mr. Dugan seconded it. Chairman Klein asked if there was any discussion. There was none. The motion was unanimously approved.

## **RESOLUTIONS**

### **09-12-04 RESOLUTION RESCINDING RESOLUTION 07-32-05, RESOLUTION TO ESTABLISH AN ACCOUNTING POLICY FOR THE APPLICATION OF E.J. WEST WATER FEES**

Mr. Bartow moved to adopt the resolution. Mr. Klein seconded it and the resolution was adopted.

### **09-13-04 RESOLUTION DIRECTING STAFF TO SOLICIT PROPOSALS IN ANTICIPATION OF HUDSON RIVER AREA REAPPORTIONMENT DUE TO U.S. COURT OF APPEALS D.C. CIRCUIT COURT DECISION IN ALBANY ENGINEERING CORP. V. FERC**

Mr. Dugan moved to adopt the resolution. Mr. Pintuff seconded it and the resolution was adopted.

### **09-14-04 RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE REGULAR MEETING FOR MAY 2009**

Mr. Bartow moved to adopt the resolution. Mr. Dugan seconded it and the resolution was adopted.

## **ADJOURNMENT**

Mr. Bartow made a motion to adjourn the Board meeting. Mr. Pintuff seconded it and the motion was unanimously approved. The meeting adjourned at 12:20 P.M.

Respectfully submitted,

Richard J. Ferrara  
Secretary/Treasurer