

**HUDSON RIVER-BLACK RIVER REGULATING DISTRICT  
BOARD MEETING  
SEPTEMBER 10, 2013**

**10:00 A.M.**

Lowville Town Offices  
5533 Bostwick Street  
Lowville, NY 13367

**CALL TO ORDER**

Chairman David W. Berkstresser called the meeting to order at 10:29 A.M.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**Present:** Board Chairman David W. Berkstresser; First Vice Chair Mark M. Finkle; Second Vice Chair Albert J. Hayes; Board Member Thomas Stover and; Executive Director Michael A. Clark; General Counsel Robert P. Leslie; Chief Fiscal Officer Richard J. Ferrara; Chief Engineer Robert Foltan; Hudson River Area Administrator John Hodgson.

**MOTION TO ADOPT OR REVISE THE MEETING AGENDA**

Chairman Berkstresser asked for a Motion to revise the meeting agenda to reflect an Executive Session to discuss personnel matters and litigation matters. Mr. Ferrara also asked the chair to consider adding two proposed Resolutions to the agenda including a Resolution to approve an extension to Contract C032007 and a Resolution to issue a conditional award regarding subsurface investigation work at Sixth Lake Dam. Mr. Stover made a Motion to adopt the proposed meeting agenda with revision. Mr. Hayes seconded it and the motion was unanimously approved.

**PUBLIC COMMENT PERIOD**

Chairman Berkstresser solicited comments from the public, hearing none.

**EXECUTIVE SESSION**

Chairman Berkstresser called for a motion to adjourn to Executive Session to discuss personnel and litigation issues. The Chairman invited the Executive Director, Chief Fiscal Officer, Chief Engineer, Hudson/Black Area Administrator and General Counsel to join the Board in Executive Session. Mr. Hayes advanced the motion, Mr. Finkle seconded. The Board adjourned to Executive Session at 10:33 A.M. and returned at 11:32 A.M.

## **APPROVAL OF THE JULY 22, 2013 AND AUGUST 20, 2013 BOARD MEETING MINUTES**

Chairman Berkstresser asked for a Motion to adopt both the July 22, 2013 Meeting Minutes and the August 20, 2013 Meeting Minutes. Mr. Hayes advanced the Motion to approve the Minutes of the Board's July 22, 2013 and August 20, 2013 regular board meetings. Mr. Stover seconded it and the motion was unanimously approved.

## **EXECUTIVE DIRECTOR'S REPORT**

Mr. Clark provided his report. He noted that he was the guest speaker at this summer's Indian Lake Association picnic and that he attended the GSLA's annual meeting. Mr. Clark noted meetings and calls with representatives from Boralex and Erie Boulevard Hydropower. He noted that the Fulton County Board of Supervisors contacted the Regulating District to gauge interest in a project to supply Fulton County with potable water. Mr. Hayes asked Mr. Clark to arrange an opportunity for Fulton County representatives and the County's consulting engineer to brief the Board on the scope and timing of their plans.

## **CONTRACTS**

### **RESOLUTION TO APPROVE A FOURTEENTH AMENDMENT TO THE RETAINER AGREEMENT FOR LEGAL SERVICES IN CONNECTION TO ONGOING LITIGATION WITH ERIE BOULEVARD HYDROPOWER, L.P. AND NIAGARA MOHAWK POWER CORPORATION**

Mr. Leslie noted that Niagara Mohawk has commenced another in its annual series of lawsuits, this one challenging the 2013-2014 Black River Area Assessment. The instant Resolution adds this suit to the list of cases under defense by the law firm of Brown & Weinraub.

Mr. Hayes moved to adopt the Resolution. Mr. Stover seconded it and the Resolution was unanimously adopted.

### **RESOLUTION TO ACCEPT BID AND ISSUE CONDITIONAL AWARD OF WORK FOR SUBSURFACE INVESTIGATION WORK AT SIXTH LAKE DAM**

Mr. Foltan noted that the Board conditionally awarded work associated with the Engineering Assessment for Sixth Lake and Old Forge Dam to Camp, Dresser, McKee & Smith (CDM) and that CDM began work in April 2013. CDM proposed soil sampling and laboratory testing to evaluate soil characteristics and groundwater conditions. Staff estimated the probable cost to complete the subsurface investigation at approximately \$20,000 and through an invitation for bid process utilized discretionary authority to seek bids from Minority-owned or Women-owned businesses. No such MWBE firm submitted a bid. A re-solicitation resulted in a single bid. The Chief Engineer recommends conditionally awarding the work to SJB Services, Inc. and authorization to execute an agreement in the amount of \$9,940.

Mr. Stover moved to adopt the Resolution. Mr. Finkle seconded it and the Resolution was unanimously adopted.

## **RESOLUTION TO APPROVE THIRD AMENDMENT TO CONTRACT C032007 WITH GEI CONSULTANTS, INC. TO EXTEND EXPIRATION DATE**

Mr. Foltan noted that in September 2007 the Board authorized a contract with GEI (C032007) to perform engineering work at Conklingville Dam. In September 2009, the Board approved the addition of services to the contract and then at the January 12, 2010 Board meeting accepted a FERC recommendation with respect to GEI's Conklingville Dam Geotechnical Report. In April 2010, the Board approved further additional work increasing the total not to exceed amount of the contract to \$247,500. Mr. Foltan now notes that the current contract is due to expire in December 2013 and that the work is likely to extend through December 2017.

Mr. Hayes moved to adopt the Resolution. Mr. Stover seconded it and the Resolution was unanimously adopted.

### **STAFF REPORTS**

Mr. Leslie presented his report to the Board.

Mr. Leslie noted that National Grid/Niagara Mohawk has failed to pay 09-10, 10-11 & 11-12 HRBRRD Black River Area Assessments on parcels 6A (Tax Map No. 73.76.1-16, Pamalia) and 26 (Tax Map No. 75.12-2-1, Rutland; 75.12-2-4, Rutland; and 76.06-2-1.1, Champion). In early 2013, National Grid paid the 2012-2013 HRBRRD Assessment on these parcels. Beginning in April 2013, his office took the lead to get Jefferson County to address National Grid's non-payment. Attempts to secure a meeting with the County Attorney or the County Administrator have proved unsuccessful. As have two Freedom of Information Law requests to secure documentation evidencing the County's collection efforts, if any, to date. Mr. Leslie is conferring with the NYS Attorney General's Office to consider next moves.

Mr. Leslie noted participation in the Appellate Division's Civil Appeals Settlement Program with representatives from the Attorney General's Office and Boralex. He also noted that the Appellate Division is set to hear the Albany Engineering Appeal later this week. A decision on that case is anticipated in early November. He noted his participation in several on-line continuing education courses offered by the NYS Attorney General's Office.

Mr. Leslie noted that the Governance Committee advanced to the full Board consideration of amendments to the Regulating District's Domestic Violence & Workplace Policy. The amendments reflect the prior liaison's retirement and the establishment of a new liaison for the Regulating District. Mr. Hayes made a Motion to adopt the revised policy. Mr. Stover seconded and the Motion was passed unanimously.

Mr. Ferrara presented his report to the Board.

At the close of fiscal August 2013, general fund balances for the HRA and BRA were approximately \$1,455,652 and \$221,359 respectively. Regulating District transactional processing and reporting for the fiscal month of August was completed in an accurate and timely fashion.

Mr. Ferrara noted that independent field audit was concluded August 22<sup>nd</sup>. He noted that the auditors followed-up on several minor issues and that staff and the auditor were able to quickly and efficiently solicit and provide the needed documents. Mr. Ferrara indicated he expects a clean audit report. A first draft of the audit is expected in time to submit to the Authorities Budget Office by the September 30<sup>th</sup> deadline. The audit will be presented to the Board in December.

Mr. Foltan presented the Chief Engineer's report to the Board.

Mr. Hodgson presented his report to the Board.

### **MOTION TO RESCIND RESOLUTION 13-30-08**

The Executive Director asked the Board to rescind Resolution 13-30-08 adopted at the Board's August 20, 2013 meeting which named John Hodgson as the acting Black River Area Administrator and split that item's duties between the Hudson River Area Administrator and the Chief Fiscal Officer. In the alternative, the Executive Director asked the Board to consider a Motion to amend the Resolution to rescind that portion of the Resolution which took \$13K of the \$100,000 saved from the split BRA Admin position and distributed it between the HRA Admin and the CFO in recognition of the additional duties their respective promotions would require.

The Board Chair took up the Motion to amend Resolution 13-30-08 to rescind those provisions which awarded additional compensation for the assumption of new duties. The Board discussed the matter. On his own Motion, the Board Chair amended the Motion to amend Resolution 13-30-08 to require that if after further consideration the Board were to later agree to pay the promotions, the extra pay would be retroactive to the Aug 20th date at which the new duties were assigned.

Mr. Berkstresser and Mr. Finkle voted in favor of the amended Motion. Mr. Hayes and Mr. Stover voted against the amended Motion.

### **RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE OCTOBER 8, 2013 BOARD MEETING**

Chairman Berkstresser asked for a Motion to adopt a Resolution setting the Tuesday, October 8, 2013 Board Meeting at the Stillwater Inn, 2591 Stillwater Road, Lowville, New York 13367 at 10:00 A.M.

Mr. Hayes moved to adopt the Resolution. Mr. Stover seconded it and the Resolution was unanimously adopted.

### **ADJOURNMENT**

There being no further business to come before the Board, Mr. Finkle moved to adjourn the meeting. Mr. Stover seconded it. The motion was unanimously approved. The meeting adjourned at 12:20 P.M.

## RESOLUTIONS

**13-31-09 RESOLUTION TO APPROVE A FOURTEENTH AMENDMENT TO THE RETAINER AGREEMENT FOR LEGAL SERVICES IN CONNECTION TO ONGOING LITIGATION WITH ERIE BOULEVARD HYDROPOWER, L.P. AND NIAGARA MOHAWK POWER CORPORATION**

Mr. Hayes moved to adopt the Resolution. Mr. Stover seconded it and the Resolution was unanimously adopted.

**13-32-09 RESOLUTION TO ACCEPT BID AND ISSUE CONDITIONAL AWARD OF WORK FOR SUBSURFACE INVESTIGATION WORK AT SIXTH LAKE DAM**

Mr. Stover moved to adopt the Resolution. Mr. Finkle seconded it and the Resolution was unanimously adopted.

**13-33-09 RESOLUTION TO APPROVE THIRD AMENDMENT TO CONTRACT C032007 WITH GEI CONSULTANTS, INC. TO EXTEND EXPIRATION DATE**

Mr. Hayes moved to adopt the Resolution. Mr. Stover seconded it and the Resolution was unanimously adopted.

**13-34-09 RESOLUTION TO ADOPT REVISED DOMESTIC VIOLENCE AND WORKPLACE POLICY**

Mr. Hayes moved to adopt the Resolution. Mr. Stover seconded it and the Resolution was unanimously adopted.

**13-35-09 RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE SEPTEMBER 10, 2013 BOARD MEETING**

Mr. Hayes moved to adopt the Resolution. Mr. Stover seconded it and the Resolution was unanimously adopted.

Respectfully submitted,

Richard J. Ferrara  
Secretary/Treasurer