

**HUDSON RIVER-BLACK RIVER REGULATING DISTRICT  
BOARD MEETING**

**Adirondack Hotel  
1245 Main Street  
Long Lake, NY 12847  
September 9, 2015**

Immediately following Governance Committee Meeting

**CALL TO ORDER**

Chairman Mark M. Finkle called the meeting to order at 10:10 A.M.

**ROLL CALL**

**Present:** Board Chairman Mark M. Finkle; First Vice-Chair Albert J. Hayes; Second Vice-Chair David W. Berkstresser, and Board Members, Jeffrey Rosenthal and Anthony M. Neddo; Executive Director Michael A. Clark; General Counsel Robert P. Leslie; Chief Fiscal Officer Richard J. Ferrara; Chief Engineer Robert Foltan; Administrator John Hodgson; and Compliance Officer Stephanie Ruzycky.

**Excused:** Robert A. Moore

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

Chairman Finkle asked for a motion to revise the meeting agenda to reflect the consideration of Board expenses to be presented during Mr. Ferrara's Report. Mr. Rosenthal made a motion to adopt the meeting agenda as revised. Mr. Berkstresser seconded and the Board unanimously approved the motion.

**PUBLIC COMMENT**

Chairman Finkle solicited comments from the public. Hearing None.

**APPROVAL OF THE JULY 28, 2015 REGULAR BOARD MEETING MINUTES**

Chairman Finkle asked for a motion to adopt the July 28, 2015 Regular Board Meeting Minutes. Mr. Rosenthal advanced the motion to approve the Meeting Minutes. Mr. Hayes seconded and the motion was unanimously approved.

**EXECUTIVE DIRECTOR'S REPORT**

Mr. Clark provided his report. Mr. Clark noted that he had caught wind of speculation within the community that the Regulating District had plans to lower the Sacandaga Lake level by three feet immediately after Labor Day. Mr. Clark took pains to dispel such rumors noting that the Regulating District had no intention of lowering the level of the Sacandaga Reservoir, but that precipitation and required minimum releases would dictate when the reservoir level

could return to the target elevation. Mr. Clark noted that prospects for funding through EFC for Conklingville continue to look good as the public comment for the project, which has been placed on USEPA's draft Intended Use Plan has closed. Mr. Clark noted that EFC has not sought Regulating District input in response to public comment, if any. Mr. Clark noted that the CSEA Local-1000 President asked that negotiations commence toward the next employment contract. The HRBRRD's current employment contract with CSEA expires June 30, 2016. Mr. Clark noted that the next Board meeting, to be located in Stillwater, is scheduled for the day after the Columbus Day holiday and asked whether any member of the Board would prefer that the meeting be pushed back a day. The Board Chair accepted the Board's consensus to keep the meeting date as scheduled. Mr. Clark noted that, in a positive development for the Regulating District, the Federal Energy Regulatory Commission issued an August 21, 2015 Order Calculating Dates for the Commencement of Headwater Benefit Assessments. Briefly explaining the decision, Mr. Clark noted that counsel for Boralex has reached out to the Regulating District's counsel with a proposal to forego a FERC re-hearing in exchange for a recalculation of the dates upon which Boralex would commence payments. Hearing the Board's consensus, Mr. Clark noted that he would ask Mr. Leslie to convey the Board's sentiments back to counsel for Boralex.

Mr. Clark noted that the Regulating District's current budget (2015-2018) has a slot for an Engineering Assistant (currently vacant at approximately \$48,000 or in that range), but asked that the Board instead authorize him to convert that item to the Maintenance Specialist title in which the incumbent would perform erosion control, maintain vehicles, etc. Mr. Clark indicated that he thought it prudent to fill the position before the end of the year in order to 'fill a hole' the Operations unit at SFO periodically experiences. Mr. Clark asked the Board to authorize him to interview candidates and present a chosen candidate at the next meeting. Mr. Clark noted that the Regulating District has resumes on file and that earlier this year he had conducted interviews through which process a couple of qualified candidates emerged. Chairman Finkle asked for a motion to authorize Mr. Clark to proceed. Mr. Berkstresser made the motion noting that the Regulating District has not returned to the staffing levels seen before the 2010 layoffs. Chairman Finkle led a discussion concerning the procedure to fill the item. Mr. Rosenthal asked that the discussion be tabled. Chairman Finkle tabled further discussion of the motion authorizing the Executive Director to solicit candidates for a Maintenance Specialist slot.

## **CONTRACTS/REPORTS**

### **RESOLUTION TO ACCEPT GEI PROPOSAL TO PERFORM SEVENTH PART 12 INDEPENDENT CONSULTANT SAFETY INSPECTION AT THE STILLWATER DAM**

Mr. Foltan presented a Resolution for the Board's consideration. He explained that the Federal Energy Regulatory Commission (FERC) requires an Independent Consultant Safety Inspection of Stillwater Dam, and an Independent Consultant Inspection Report, be completed every five years and that as a result, a 7th Part 12D Independent Consultant Safety Inspection Report for Stillwater must be submitted to FERC by January 1, 2016. In April 2015 the Board authorized staff to procure engineering services to complete the Stillwater Dam Independent Consultant Safety Inspection. At the July 28, 2015 meeting, the Board conditionally awarded the

Independent Consultant Safety Inspection Work to GEI Consultants, Inc., P.C. (GEI) and requested a scope of work and fee proposal from GEI.

Mr. Foltan noted that GEI proposes to use Lee Wooten, P.E. as the independent consultant and then detailed Mr. Wooten's qualifications and experience. He noted that the scope of services includes a site visit, review of existing project investigations and studies, a draft report, progress report conference call and a Final Inspection report. Mr. Foltan noted that GEI proposes to provide the services detailed in its proposal for a not-to-exceed price of \$27,284.

Mr. Rosenthal moved to adopt the Resolution to accept the GEI proposal to complete work for the Stillwater Dam Seventh Part 12 Consultant Inspection. Mr. Hayes seconded it and the Board adopted the motion by unanimous vote.

### **GOVERNANCE COMMITTEE REPORT**

Governance Committee Chairman Rosenthal reported on the Committee's September 9, 2015 meeting.

### **PROCUREMENT POLICY REVISIONS**

Governance Committee Chair Rosenthal reported that staff had proposed revisions to the Procurement Policy noting that the Regulating District awaits comments on the proposal from the Office of the State Comptroller's contract approval unit. As such, Mr. Rosenthal indicated that the Committee was not yet prepared to advance the proposal to the Board for its consideration and approval.

### **RESOLUTION TO APPROVE A FIRST AMENDMENT TO LEGAL SERVICES CONTRACT C042014 WITH GIRVIN FERLAZZO, PC IN CONNECTION WITH THE NIMO STATE & FEDERAL CASES**

Governance Committee Chair Rosenthal presented a resolution amending the term and scope of the Legal Services Contract C042014 with Girvin Ferlazzo, PC. He noted that all Board Members were present during the Governance Committee discussion a few minutes earlier and asked that these meeting minutes reflect that discussion. Niagara Mohawk continues to challenge both Hudson and Black River area assessments in state supreme court and in the United States District Court. Niagara Mohawk has filed another Article 78 challenge; this time to the Regulating District's 2015-2016 assessments on properties Niagara Mohawk owns in the Black River Area. The state court cases remain on hold while Niagara Mohawk pursues its aims in federal court. The federal court recently issued a decision on the competing motions for summary judgement; which put the parties on a path for trial in January 2016. Mr. Rosenthal recommended that the Board adopt the Resolution extending contract C042014 by one year and including within that contract's scope the 2015-2016 Article 78 challenge and the 2015-2016 Notice of Claim so as to permit Girvin Ferlazzo, PC's defense of the federal suit including appeals, and then defense of the state suits, including appeals.

Mr. Neddo made a Motion to adopt Resolution approving a first (1<sup>st</sup>) amendment of Legal Services Contract C042014. Mr. Rosenthal seconded the motion which was then approved by unanimous vote.

## **RESOLUTION TO ADOPT THE REGULATING DISTRICT'S CONFLICT OF INTEREST POLICY**

Governance Committee Chair Rosenthal presented a Resolution to adopt a new Conflict of Interest Policy for the Regulating District. He explained that on August 24, 2015, the NYS Authorities Budget Office released a new Guidance Document suggesting that each NYS Public Authority adopt a Conflict of Interest Policy. The ABO included a draft Conflict of Interest Policy within the guidance document. In order to facilitate a discussion of this matter, Counsel prepared a draft Conflict of Interest Policy based on the ABO model for the Governance Committee's consideration. Mr. Rosenthal explained that the draft policy shares language with the Regulating District's Code of Ethics; a document also based upon an ABO model, but also noted that the draft conflicts policy goes further to offer a fuller definition of a conflict, establish a duty to disclose such conflicts, require that Board members recuse themselves in certain situations, and require that Board minutes reflect how conflicts are resolved. Mr. Rosenthal recommended that the Board adopt the resolution to adopt the new Conflict of Interest Policy.

Mr. Rosenthal made a motion to adopt the Resolution adopting a new Regulating District Conflict of Interest Policy. Mr. Berkstresser seconded the motion which was then approved by unanimous vote.

## **STAFF REPORTS**

Mr. Leslie presented his report to the Board. Mr. Leslie reported that on August 21, 2015, FERC issued its *Order "Calculating Dates for the Commencement of Headwater Benefits Assessments"*. FERC's Order holds Erie to the 2006 Settlement with HRBRRD establishing assessments for 7/1/2000 - 6/30/2009. FERC rejected Erie's claim for \$15,905,759 (\$7,296,867 for HWB plus \$8,608,895 in interest). Accordingly, beginning 7/1/2009, Erie's annual 10(f) assessment will be \$365,100. Mr. Leslie noted that FERC determined credits without interest; a significant victory for the Regulating District. He noted that FERC rejected HRBRRD's argument that state court losses should preclude Boralex & NYSEG from participating in FERC's crediting mechanism. As a result, Mr. Leslie noted that Erie, South Glens Falls (part of Boralex), and Albany Engineering are already obligated to begin making HWB assessment payments. Curtis Palmer, Fort Miller Associates, Stillwater Hydro Associates, NYSEG, Green Island Power Authority, and Northern Electric (the other part of Boralex) will continue to offset HWB assessments against state based HRBRRD assessments previously paid for years or decades to come. The parties to this proceeding may file a request for rehearing of FERC's Order within 30 days (September 20<sup>th</sup>). Thereafter, those parties may elect to challenge FERC's Order through the federal courts. Mr. Leslie noted that NiMo filed and Girvin Ferlazzo answered an Article 78 challenging the 2015-2016 Black River area assessments. The court ruling granting the Regulating District partial summary judgment on competing motions for summary judgment on Nimo's federal constitutional challenges arrived yesterday, September 8<sup>th</sup>. Mr. Leslie noted that the federal court has scheduled the matter for trial in January 2016.

Mr. Leslie reported no new news on EFC's finalization of the CWSRF "Intended Use Plan" through which HRBRRD's Conklingville Dam projects may secure low cost financing under EPA's Section 319 Non-Point Source Management block grant program. He noted that the comment period for finalization of the "IUP" closed September 4<sup>th</sup> and now must await meetings between EFC and US EPA Region 2. Mr. Leslie thanked Ms. Ruzycky and Mr. Ferrara for their assistance drafting proposed revisions to the Procurement Policy. Mr. Leslie noted that he submitted the Board's annual summary of Board performance to the Authorities Budget Office well in advance of the September 30<sup>th</sup> deadline for do so and that in accordance with guidance from that office, prepared the draft Conflict Policy the Board considered earlier. Mr. Leslie reported that he drafted the legal contingencies footnote necessary in connection with annual independent audit and that he has heard no further word from NYS DOT regarding transfer of jurisdiction over lands necessary for Batchellerville Bridge reconstruction project. DOT continues to work on maps necessary to transfer jurisdiction over unneeded lands back to HRBRRD. Finally, Mr. Leslie noted that there were no FOIL requests nor appeals filed during the reporting period.

Ms. Ruzycky presented her report to the Board. She noted that the Regulating District's 1<sup>st</sup> quarter utilization report was approved by ESD. She noted that the current quarter MWBE utilization includes: \$7,326 to Landmark Archeology and the purchase of an equipment trailer at \$19,105. She noted that the garage roof has been completed with an MWBE portion of \$22,735. Ms. Ruzycky noted that she submitted materials required as part of NYS's network security assessment project to determine potential weaknesses and/or vulnerabilities. She noted that she traveled to Watertown to assess that office's internal control processes. Ms. Ruzycky also noted that she has set up vehicle training required by the Regulating District's Vehicle Use Policy and that she continues to work with the Regulating District CFO on an online payment system for access permit renewals. Ms. Ruzycky noted that all Regulating District employees have completed Cyber Security Awareness Training.

Mr. Ferrara presented his report to the Board. He noted that the Independent Auditor's (KBL, LLC) field team was in the office during the last week of August and that he spent most of his time preparing for their effort preparing Public Authority reports due on September 30, 2015. All indications are that the Audit was the smoothest he has been involved in and that he expects an unqualified audit report. Mr. Ferrara noted that the general fund balances for the HRA and BRA closed at \$643,751 and \$346,986 respectively and that Regulating District transactional processing and reporting for the fiscal months of July and August were completed with District bank reconciliations complete through July 31, 2015. EFC provided figures for the Conklingville financing. EFC provided schedules based on their typically low interest rate and the rate the Regulating District would likely get on its own. The savings exceed \$1 Million over 30 years.

Mr. Ferrara presented affidavits evidencing necessary and reasonable Board expenses incurred by Anthony Neddo (\$142.60) in the course of his duties as a Board member. Chairman Finkle asked for a motion to approve payment of such expenses. Mr. Rosenthal so moved. Mr. Hayes seconded and the Board passed the motion by unanimous vote.

Mr. Foltan presented the Chief Engineer's report to the Board. Precipitation in the Hudson River area mirrors what was seen in July, precipitation remains at 50% of historic average. We conserved as much as we could and reduced our releases while maintaining minimum flows. At Sacandaga and Indian Lake we had about 50% of historic average inflow. The Indian, Sacandaga and Hudson Rivers released about 86% of historic average. Black River area shows 70% of historic average precipitation and Stillwater received 44% of historic average inflow and released only about 60% to maintain flow in the Beaver and the Black Rivers. As a result, the reservoirs are below historic averages. There is not a lot more that can be done. For instance, the Hudson at Hadley hit 360 cfs over the weekend, the lowest Mr. Foltan had seen. Knowing that the release from Indian Lake was 200 cfs shows how dry it really is.

Mr. Hodgson presented his report to the Board. Mr. Hodgson reported on efforts to train staff in accordance with State Insurance Fund mandates and that he had been working with Ms. Ruzycky to get staff trained on cyber security issues. He noted that he and the Executive Director met with Mr. Thompson of Beaver River Station about Grassy Point, six mile road, and boat docking issues. Mr. Hodgson noted that, with the Executive Director, he attended a Town of Day Property Owners Association Meeting on a Saturday in August. He noted that the Regulating District will be breaking ground on the District garage at Stillwater tomorrow August 10, 2015.

## **BOARD MEMBER QUESTIONS AND COMMENTS**

Mr. Berkstresser asked Mr. Foltan for a status update on the Hawkinsville Dam project. Mr. Foltan noted that staff continue to work through the engineering necessary for the project but that, ultimately, the project schedule is dependent upon financing.

Mr. Ferrara noted that the bids for two vehicles the Regulating District intends to sell came in on Friday, August 14, 2015. Both bids were above the respective minimum bid of \$5,000. Mr. Ferrara noted that the Regulating District accepted the bid on the Ford F250 of \$6,890 and the bid on the Chevy Tahoe of \$7,502.

Mr. Clark noted that the Saratoga County Treasurer has asked for a meeting to discuss procedures for handling real property taxes owed to the County by the Regulating District and assessments owed by Saratoga County to the Regulating District as well as the past due real property tax amounts due pursuant to the 2012 Apportionment by Consent executed by the Regulating District and the Five Counties. Mr. Clark set the meeting for the 21<sup>st</sup> of September.

## **RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE REGULAR BOARD MEETING FOR OCTOBER 13, 2015**

Chairman Finkle asked for a motion to adopt a Resolution setting the next meeting of the Board of the Hudson River-Black River Regulating District for Tuesday, October 13, 2015 at the at the Regulating District's Stillwater Office, 116 Necessary Dam Road, Lowville, NY 13367 at 10:00 A.M. Chairman Finkle asked for a motion to set the meeting as indicated.

Mr. Berkstresser moved to adopt the Resolution setting the date, time and place of the next meeting. Mr. Hayes seconded it and the Resolution was unanimously adopted.

## **ADJOURNMENT**

There being no further business to come before the Board, Mr. Rosenthal moved to adjourn the meeting. Mr. Neddo seconded it. The motion was unanimously approved. The meeting adjourned at 10:53 P.M.

## **RESOLUTIONS**

### **15-32-09 RESOLUTION TO ACCEPT GEI PROPOSAL TO PERFORM SEVENTH PART 12 INDEPENDENT CONSULTANT SAFETY INSPECTION AT THE STILLWATER DAM**

Mr. Rosenthal moved to adopt the Resolution to accept the GEI proposal to complete work for the Stillwater Dam Seventh Part 12 Consultant Inspection. Mr. Hayes seconded it and the Board adopted the motion by unanimous vote.

### **15-33-09 RESOLUTION TO APPROVE A FIRST AMENDMENT TO LEGAL SERVICES CONTRACT C042014 WITH GIRVIN FERLAZZO, PC IN CONNECTION WITH THE NIMO STATE & FEDERAL CASES**

Mr. Neddo made a motion to adopt Resolution approving a first (1<sup>st</sup>) amendment of Legal Services Contract C042014. Mr. Rosenthal seconded the motion which was then approved by unanimous vote.

### **15-34-09 RESOLUTION TO ADOPT THE REGULATING DISTRICT'S CONFLICT OF INTEREST POLICY**

Mr. Rosenthal made a motion to adopt the Resolution adopting a new Regulating District Conflict of Interest Policy. Mr. Berkstresser seconded the motion which was then approved by unanimous vote.

### **15-35-09 RESOLUTION SCHEDULING DATE, TIME AND LOCATION OF THE REGULAR BOARD MEETING FOR OCTOBER 13, 2015**

Mr. Berkstresser moved to adopt the Resolution setting the date, time and place of the next meeting. Mr. Hayes seconded it and the Resolution was unanimously adopted.

Respectfully submitted,

Richard J. Ferrara  
Secretary/Treasurer

Mark M. Finkle  
Board Chairman