

**MARVIN NEWBERG**  
ATTORNEY-AT-LAW

33 NORTH STREET  
MONTICELLO, NEW YORK 12701

TELEPHONE (845) 794-8415  
FAX (845) 794-9701  
E-Mail [mnewberg@verizon.net](mailto:mnewberg@verizon.net)

January 12, 2015

**VIA MAIL AND EMAIL**

New York State Public Service Commission  
Office of Electric, Gas and Water  
Empire State Plaza  
Agency Building 3  
Albany, NY 12223-1350  
Attention: Bruce Alch

Re: Emerald Green Lake Louise Marie Water Company Request for Surcharge

Dear Mr. Alch:

I am the attorney for Emerald Green Lake Louise Marie Water Company (EGLL) and this correspondence is sent as a request and/or petition for the PSC to initiate proceedings to approve a surcharge to the customers of EGLL for reimbursement of the costs expended in the rehabilitation of the Lake Louise Marie dam and spillway, and to insure the integrity of the sole source of supply for the water processed and delivered by EGLL.

As a summary of the history which is the basis for this application, EGLL provides water service at present to 840 homeowners, 629 of which reside in the Emerald Green development and 211 reside in the Lake Louise Marie development. Each development is governed by separate not for profit property owners associations. Emerald Green development being governed by EGPOA, and Lake Louise Marie development governed by Lake Louise Marie Homeowners Association.

The sole water supply for EGLL is Lake Louise Marie. Lake Louise Marie is owned by EGPOA. EGPOA is also the owner and sole shareholder of EGLL.

There is a dam and a spillway at Lake Louise Marie. The New York State DEC has been monitoring the dam and spillway at Lake Louise Marie for several years, and as it is the case with many earthen dams in the area, there has been great concern regarding the safety, reliability and adequacy of the dam and the spillway. EGPOA has been dealing with the dam safety and maintenance and reconstruction issues with the DEC and through the professional engineers hired by the EGPOA, Clough, Harbour & Associates, LLP of Albany, New York. To date EGPOA has spent several hundred thousands of dollars, which have been paid for exclusively by

the dues and assessments of the Emerald Green homeowners for engineering and maintenance work preparatory to the Lake Louise Marie dam and spillway reconstruction project. EGPOA, as the owner of the lake is under an obligation to the DEC to insure that adequate repairs and reconstructions of the dam and spillway are effected in a timely manner. In the event of a catastrophe such as the breach or failure of the dam and spillway, the waters of Lake Louise Marie would be depleted as well as causing severe flooding downstream endangering life and property. Such occurrence would result in there being no water supply for EPLL to fulfill its obligation to provide water to its customers under its charter and regulatory obligations.

At present, a bid has been awarded to Cal Mart Enterprises, Inc. of Congers, New York to effect the necessary Lake Louise Marie dam and spillway repairs and reconstruction. At present the contract between EGPOA and Cal Mart is in the process of being finalized and I enclose an AIA form contract that has been prepared and is being negotiated. As can be seen from the last two pages of the Contract entitled Continuation Sheet, the cost of the contract is \$1,020,000.00.

To finance this indispensable and necessary contract, EGPOA has received a commitment letter from NBDC Bank for a \$1,000,000.00 commercial loan. I enclose a copy of the proposed commitment letter, the terms of which are also being negotiated at this time.

To pay off this necessary loan with the NBDC, EGPOA has had to assess its homeowners in the amount of \$2,100.00 per home to be paid over 3-year period, a substantial burden for many homeowners.

The dam and spillway repairs and reconstruction are absolutely necessary for the continued operation of EPLL and the supply of water to its customers including those residing in the Lake Louise Marie development. To date the Lake Louise Marie Association has not contributed any money towards the dam expenses over the past approximate eight years. In order to equitably apportion the cost of the dam repairs and reconstruction, it is requested that the PSC approve a surcharge for all of the customers of EPLL to reimburse EGPOA for all necessary costs that it has and will expend in this endeavor to protect the water supply. By proceeding in this fashion, the costs can be equitably apportioned between the Emerald Green residents and Lake Louise Marie development residents, and the Emerald Green residents who have paid and will pay their assessments can be reimbursed or at least partially reimbursed for their funding of the cost of the dam repair and reconstruction.

For your reference I am enclosing a January 2012 DEC notification to EGPOA as well as an April 2012 inspection report of the DEC with attachments. I enclose the Phase II Engineering Assessment Report prepared for EGPOA by Clough, Harbour & Associates dated April 25, 2008 regarding the Lake Louise Marie dam. There is no issue that the work that has been contracted for both with the engineers and Cal Mart is absolutely necessary for the continued viability of Lake Louise Marie and the water supply to EPLL's customers. In the event further documentation is requested by the PSC we would be glad to provide same.

I enclose an information packet that was sent out to all EGPOA members explaining and detailing the history of the dam project, cost of same and the hopes that the PSC will authorize

this surcharge request so that the costs can be equitably apportioned between Emerald Green residents and Lake Louise Marie residents, all of whom are the EGLL customers.

It also appears equitable that the current engineering costs associated with the work to be performed on the dam and spillway be included in the computation of the amount for the surcharge. We will certainly forward these current costs to you under separate cover upon your reply to this initial request and your advises as to any further, more formal procedure which the Department of Public Service requires.

On behalf of the EGLL and its directors, I thank you for the prior conferences and advises which have been extended, and we look forward to working with your department to achieve the requested result.

Please forward this application to all PSC staff or officials who should get notice of same.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'M. Newberg', is written over the typed name.

Marvin Newberg

MN/md

encl.

cc: EGLL Water Company - via email w/o encl.  
EGPOA Board of Directors - via email w/o encl.  
Michael Hoyt - via email w/o encl.  
PSC staff - via email