

BACKGROUND

Erie owns and operates 75 hydroelectric generating facilities on over 20 river systems in New York State with an installed combined generating capacity of approximately 708 MW (the “Erie Hydros”). A complete list of the Erie Hydros is annexed to this Petition as Exhibit 1. Each of these generating facilities is powered exclusively by water and has a generating capacity, together with any related facilities at the same site, of less than 80 MW.

Brookfield Renewable Power Inc. (“BRPI”) indirectly owns Erie. BRPI is a wholly-owned direct and indirect subsidiary of Brookfield Asset Management Inc., the ultimate parent company in the Brookfield family of corporations. BRPI has more than 100 years of experience as an owner, operator and developer of hydroelectric power facilities. With assets in North America and Brazil, its total portfolio includes more than 170 generating facilities with over 4,300 MW of capacity. BRPI also has a significant hydroelectric and wind project pipeline.

By Order dated May 27, 1999, the Commission authorized Erie to acquire its hydroelectric generating facilities from Niagara Mohawk Power Corporation (“NiMo”).¹ Notwithstanding the fact that each of the hydroelectric generating facilities that Erie acquired from NiMo is powered exclusively by water and has a generating capacity, together with any related facilities at the same site, of less than 80 MW, the Commission granted Erie lightened regulation by Order dated June 28, 1999.²

¹ Case 94-E-0098, et al., *Niagara Mohawk Power Corporation – PowerChoice Rate and Restructuring Plan, Order Approving Transfer of Hydroelectric Generation Facilities and Making Other Findings* (Issued May 27, 1999) (“Hydro Transfer Order”).

² Case 99-E-0679, *Erie Boulevard Hydropower, L.P., Order Providing for Lightened Regulation* (Issued and Effective June 28, 1999) (“Erie Regulation Order”).

ANALYSIS

I. ERIE IS NOT AN ELECTRIC CORPORATION SUBJECT TO REGULATION BY THE COMMISSION UNDER THE PUBLIC SERVICE LAW

The Commission lacks jurisdiction over Erie as Erie is not an “electric corporation” subject to regulation by the Commission under the PSL.

PSL § 2(13) defines the term “electric corporation” to include:

every corporation, company, association, joint-stock association, partnership or person, their lessees, trustees or receivers . . . owning, operating or managing any electric plant . . . *except where electricity is generated by the producer solely from one or more co-generation, small hydro or alternate energy production facilities . . .* [emphasis supplied]

PSL § 2(2-d) in turn defines the term “small hydro facility” as used in PSL § 2(13) to include “any hydroelectric facility, together with any related facilities at the same project site, with an electric generating capacity of up to eighty megawatts.”

All of the generating facilities owned and operated by Erie are hydroelectric facilities. None of these facilities has an electric generating capacity, together with any other facilities owned by Erie at the same site, in excess of 80 MW. Accordingly, Erie squarely fits within the express exception from the statutory definition of “electric corporation” provided in PSL § 2(13) for small hydro facilities. Erie is, therefore, not an electric corporation subject to regulation by the Commission.

While the Commission has found or assumed in a number of prior orders that Erie is an electric corporation subject to lightened regulation by the Commission, none of those cases contains any express findings of jurisdictional fact that would provide a basis for a determination that any of Erie’s generating facilities fail to qualify as “small hydro facilities” under PSL § 2(2-d) or that Erie owns or operates any “electric plant” other than

these hydroelectric generating facilities. In each of these cases, however, ownership of Erie was being transferred together with ownership of Carr Street Generating Station, LP, which owns and operates a 102 megawatt gas-fired combined cycle cogeneration facility, and therefore comes within the definition of an “electric corporation” under the PSL.

Accordingly, the Commission must find on the basis of the record in this Petition that no authority exists in the PSL for the Commission to exercise supervisory jurisdiction over Erie.

CONCLUSION

WHEREFORE, for the above-stated reasons, Erie Boulevard Hydropower, L.P. respectfully requests that the Commission issue a declaratory ruling disclaiming jurisdiction over it.

Respectfully submitted,

/s/ George M. Pond

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L.P.*

Dated: May 30, 2013

EXHIBIT 1

**LIST OF HYDROELECTRIC FACILITIES OF
ERIE BOULEVARD HYDROPOWER, L.P.**

NEW YORK EAST OPERATIONS

River System	Facility	Capacity
Upper Hudson		
Sacandaga	EJ West	22.10
	Stewarts	36.0
Hudson	Spier Falls	56.0
	Sherman Island	38.25
	Feeder Dam	5.0
	Glens Falls	14.79
West Delaware	West Delaware tunnel	7.50
Fish Creek	Schuylerville	1.70
Hoosic	Johnsonville	2.0
	Schaghticoke	16.40
Mohawk	School Street	38.0
East Canada Creek	Inghams Mills	6.80
	Beardslee	18.60
Caroga Creek	Ephratah	5.0
Raquette (East)	Stark	25.70
	Blake	14.90
	Rainbow	24.90
	Five Falls	24.40
	South Colton	21.0
	Higley	6.20
	Colton	30.0
	Hannawa	7.40
	Sugar Island	4.20
Salmon South	Bennetts Bridge	30.0
	Lighthouse Hill	8.50
West Canada Creek	Prospect	18.80
	Trenton	27.80

NEW YORK WEST OPERATIONS

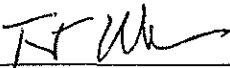
River System	Facility	Capacity (mw)	
Oswegatchie	Upper Newton Falls	1.50	
	Lower Newton Falls	0.70	
	Browns Falls	16.60	
	Flat Rock	5.10	
	South Edwards	3.40	
	Oswegatchie	2.0	
	Talcville	1.0	
	Heuvelton	0.90	
	Eel Weir	2.40	
	Raquette (West)	Piercefield	2.70
		Hewittville	2.80
Unionville		3.0	
Norwood		2.20	
Yaleville		0.70	
East Norfolk		3.60	
Norfolk		4.50	
Raymondville		2.20	
Salmon (North)	Chasm	4.10	
	Macomb	1.0	
Saranac	Franklin Falls	2.20	
St. Regis	Parishville	2.50	
	Allens Falls	4.20	
	Hogansburg	0.50	
Beaver and Black			
Beaver	Moshier	8.6	
	Eagle	5.90	
	Soft Maple	15.40	
	Effly	3.10	
	Elmer	2.10	
	Taylorville	4.60	
	Belfort	1.90	
	High Falls	6.0	
Black	Herrings	4.80	
	Deferiet	11.0	
	Kamargo	5.40	
	Black River	7.20	
	Sewalls	2.30	
	Beebee	9.40	

Oswego		
Seneca	Baldwinville	0.60
Oswego	Oswego Falls East	4.50
	Oswego Falls West	2.80
	Fulton	1.20
	Granby	10.30
	Minetto	7.60
	Varick	6.0
Oak Orchard Creek		
NYS Barge Canal	Hydraulic Race	2.80
	Oak Orchard	0.40
Oak Orchard Creek	Glenwood	1.50
	Waterport	4.0


STATE OF NEW YORK)
) ss.:
COUNTY OF ONONDAGA)

VERIFICATION

Thomas Uncher, being duly sworn, deposes and says as follows: I am the General Manager, NYE Operations for Brookfield Renewable Power, Inc., the owner of Erie Boulevard Hydropower, L.P., the Petitioner in this proceeding. I have read the foregoing Verified Petition for Expedited Declaratory Ruling, including the exhibits thereto, and know the contents thereof; and the information set forth therein is true to my own knowledge.



Subscribed and sworn to before me
this 30th day of May, 2013



Notary Public, State of New York
My Commission is/expires April 25, 2015

SUE BALLOU-LANGDON
Notary Public, State of New York
Registration No. #01BAG239935
Qualified in Warren County
Comm. Expires April 25, 2015