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January 14, 2010

Low Impact Hydropower Institute
34 Providence Street
Portland, ME 04103
info@lowimpacthydro.org

Re: School Street Project (FERC No. 2539) Comments

Dear Sir:

In response to your Notice of Certification Application Filing for the above-captioned Project, the Green Island Power Authority submits these Comments and requests that they be considered as part of the certification process requested by Erie Boulevard for its School Street Project.

Comment 1. GIPA notes that on August 10, 2009, the United States Court of Appeals for the Second Circuit issued a decision in which it invalidated the 2007 license issued by the Federal Energy Regulatory Commission for Project No. 2539. *Green Island Power Authority v. FERC*, 577 F.3d 148 (2d Cir. 2009). FERC did not seek rehearing or certiorari to the United States Supreme Court, so that decision is final, and the matter has been remanded to FERC for additional proceedings. The basis for the Erie Boulevard application is the FERC Order issuing the new Project No. 2539 license and approving the Settlement Agreement for the relicensing case. It would appear that until

the validity of the School Street License is determined, the certification application is premature, at best.

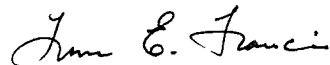
Comment 2. The Erie Boulevard Application does not provide requisite information consistent with LIHI's proposed new regulations governing certification. The Settlement Agreement and vacated 2007 School Street Relicensing Order provided Erie Boulevard with an option to construct a new facility. Many questions that Erie Boulevard should have answered in its Application were omitted on the grounds that only the existing Project was being certified. The addition of responses from Erie Boulevard to LIHI's questions regarding new Project construction, consistent with its proposed instructions, should assist LIHI in evaluating the suitability of certification for the additional new construction at School Street, if Erie Boulevard intends to commit to that new construction and if the output of the new construction is intended to be covered by the certification.

Comment 3. The Erie Boulevard Application relies on the agency resource comments produced in the course of settlement negotiations that were not open and transparent. Indeed, a critical issue in the Second Circuit decision referred to above was the exclusion of many individuals and organizations that sought inclusion in the shaping of the relicensing. Under these circumstances, it would appear that Erie Boulevard's reliance on the Resource Agency Recommendations (RAR) obtained in the course of the relicensing settlement negotiations should be scrutinized carefully. Indeed, under the LIHI proposed revisions (April 2009) to its regulations, RARs that are subsequently overturned by a legal proceeding cease to be valid for the purposes of certification.

Comment 4. LIHI should verify the Application contents by checking with the opposing testimony in the School Street relicensing case presented by several witnesses¹ and also the initial recommendations of the resource agencies, as described in FERC's Draft Environmental Assessment ("DEA").²

In conclusion, these comments are hardly comprehensive, but they strongly support a conclusion that the School Street Project certification request is untimely, incomplete, and needs additional verification and independent confirmation by LIHI that the School Street Project, as presented by Erie Boulevard, is eligible for consideration and meets the high standards set by LIHI as necessary for certification. Thank you for requesting our comments.

Very truly yours,



Frances E. Francis
Attorney for Green Island Power
Authority

Attachments (2)

List of Contacts
GIPA v. FERC, 2d Circuit decision

cc: Jack Brown, GIPA
Kristin Swinton, GIPA

¹ A partial list of some key witnesses and their contact information is attached.

² For example, see page 56 of the DEA, issued November 1996. Draft Environmental Assessment for Hydropower License, School Street Hydroelectric Project, FERC Project No. 2539 (New York) (Nov. 1996), available at eLibrary Accession No. 19961126-0039.

SCHOOL STREET PROJECT, FERC PROJECT NO. 2539
APPLICATION OF ERIE BOULEVARD FOR LIHI CERTIFICATION

LIST OF CONTACTS*

1. James A. Besha, Albany Engineering, 5 Washington Square, Albany, NY 12205, Tel: 518-456-7712. Exh. GIP-011, Comments of Green Island Power Authority, Opposing the Offer of Settlement and Related Comments, submitted April 13, 2005. (hereafter "GIPA Comments").
2. Fred A. Dente, President, Dente Engineering, P.C., Tel: 518-266-0310. Prepared Affidavit in Project No. 2539, Exh. GIP-012, GIPA Comments.
3. Charles J. Malley, 44 Carlton Avenue, Cohoes, NY 12045. Attachment F, GIPA Comments.
4. Mark Swinton, Ph.D., Biologist, Tel.: 518-368-4033. Prepared Affidavit in Project No. 2539, Exh. GIP-013, GIPA Comments.

*The Affidavits or letters of these individuals were part of a filing made by the Green Island Power Authority in the FERC relicensing proceeding for the School Street Project, in response to the Settlement Agreement referred to by Erie Boulevard in its Certification Application. All the Affidavits and letters are a part of the public record and are accessible through the FERC eLibrary.

Submitted by: Frances Francis, Spiegel & McDiarmid, for Green Island Power Authority
Date: January 14, 2010