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October 10, 2006

Hon. Magalie R. Salas, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

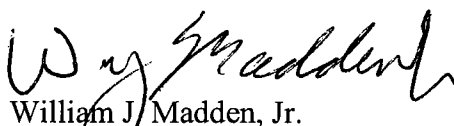
**Re: School Street Hydroelectric Project FERC Project No. 2539  
Submittal of Section 401 Water Quality Certification**

Dear Secretary Salas:

On behalf of Erie Boulevard Hydropower, L.P. (Erie) we are transmitting an original and eight copies of the Section 401 Water Quality Certification (401 WQC) for Erie's School Street Hydroelectric Project (FERC No. 2539) which was issued by the New York State Department of Conservation (NYSDEC) on October 10, 2006. This submittal is in follow-up to Erie's March 9, 2005 filing of the Settlement Agreement and Explanatory Statement for the relicensing of Erie's School Street Project, and Erie believes this 401 WQC is consistent with the terms of that Settlement Agreement.

If there are any questions regarding this submittal, please do not hesitate to contact David Culligan at (315) 413-2792.

Respectfully submitted,



William J. Madden, Jr.  
Attorney for Erie Boulevard Hydropower, L.P.

Enclosure

cc: Service List



**PERMIT**  
**Under the Environmental Conservation Law (ECL)**

**Certificate Holder and Facility Information**

**Permit Issued To:**

ERIE BOULEVARD HYDROPOWER LP  
225 GREENFIELD PARKWAY  
LIVERPOOL, NY 13088  
(315) 413-2787

**Facility:**

SCHOOL STREET HYDROELECTRIC PROJECT  
MOHAWK RIVER  
COHOES, NY

**Facility Location:** in COHOES in ALBANY County

**Facility Principal Reference Point:** NYTM-E: 605.7

NYTM-N: 4737.7

**Project Location:** On the Mohawk River, near the junction of School Street and North Mohawk Street.

**Authorized Activity:** Operation and maintenance of the School Street Hydro facility (FERC No. 2539), a 38.8 MW hydroelectric facility in accordance with the attached conditions.

**Permit Authorizations**

**Water Quality Certification - Under Section 401 - Clean Water Act**

Permit ID 4-0103-00027/0001 (FERC 2539)

New Permit Effective Date: 10/10/2006

Expiration Date: Coincident with expiration date of  
Federal Energy Regulatory Commission license for  
FERC project No. 2539

**NYSDEC Approval**

**By acceptance of this permit, the Certificate Holder agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, and all conditions included as part of this permit.**

Permit Administrator: WILLIAM R ADRIANCE, Chief Permit Administrator  
Address: NYSDEC HEADQUARTERS  
625 BROADWAY  
ALBANY, NY 12233

Authorized Signature: William R. Adriance

Date: 10/10/2006

**Distribution List**

W. Clarke, R4

T. Hall, R5



Settlement parties

**Permit Components**

NATURAL RESOURCE PERMIT CONDITIONS

WATER QUALITY CERTIFICATION SPECIFIC CONDITIONS

GENERAL CONDITIONS, APPLY TO ALL AUTHORIZED PERMITS

NOTIFICATION OF OTHER CERTIFICATE HOLDER OBLIGATIONS

**Permit Attachments**

**NATURAL RESOURCE PERMIT CONDITIONS - Apply to the Following  
Permits: WATER QUALITY CERTIFICATION**

**1. Conformance with Plans** All activities authorized by this permit must be in strict conformance with the approved plans submitted by the applicant or his agent as part of the permit application and licensing Settlement Agreement.

**2. State Not Liable for Damage** The State of New York shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the State for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.

**3. Precautions Against Contamination of Waters** All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the project.

**4. No Interference with Navigation** There shall be no unreasonable interference with navigation by the work herein authorized.

**5. State May Require Site Restoration** If upon the expiration or revocation of this permit, the project hereby authorized has not been completed, the applicant shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may with appropriate authority require, remove all or any portion of the uncompleted structure or fill and restore the site to its former condition. No claim shall be made against the State of New York on account of any such removal or alteration.

**6. Notification Requirements for Emergencies.** The following procedures shall apply to all activities



conducted at the project in response to an emergency:

Prior to commencement of emergency activities, Certificate Holder must notify NYSDEC and receive approval in advance of the work commencing. If circumstances require that emergency activities be taken immediately such that prior notice to the NYSDEC is not possible, then the NYSDEC must be notified by the Certificate Holder within 24 hours of commencement of the emergency activities. In either case, notification must be by certified mail or other written form of communication, including fax and electronic mail. This notification must be followed within 24 hours by submission of the following information:

- a. a description of the action;
- b. location map and plan of the proposed action;
- c. reasons why the situation is an emergency.

All notifications, requests for emergency authorizations and information submitted to support such requests shall be sent to the contacts listed in Special Condition .

**7. Settlement Agreement.** This Certificate includes and incorporates the School Street Project Settlement Agreement dated March 7, 2005 and submitted to the Federal Energy Regulatory Commission (FERC) on March 8, 2005.

## **OPERATIONS**

**8. Run of River Operations.** Within 18 months of the issuance of the FERC operating license for this project the Certificate Holder shall operate the project in a run-of-river mode in accordance with the Settlement Agreement, in particular Section 3.1.

**9. Aquatic Habitat Flows to be Released to Bypassed Reach.** The Certificate Holder shall provide aquatic habitat flows to the bypassed reach in accordance with the following;

a) **Interim Flow.** On the date FERC issues a new operating license for the project the Certificate Holder shall provide an interim flow of 90 cfs to be released into the bypassed reach from a canal gate near the upper gatehouse at the south end of the dam and in accordance with the Settlement Agreement, in particular Section 3.2.1.

b) **Permanent Flows.** Within one year of issuance of the FERC operating license the certificate holder shall provide to the Department for review and approval the final design of the structures to be constructed and operated to provide permanent flows to the bypassed reach as referenced in the Settlement Agreement, in particular Section 3.2.2.

Within 18 months of issuance of the FERC operating license the Certificate Holder shall begin to release the aquatic habitat flow to the bypassed reach of the Mohawk River in accordance with the approved design and the Settlement Agreement, in particular Section 3.2.2, including Table 3.2.A.

c) **Channel Modifications.** Within one year of issuance of the FERC operating license the certificate holder shall submit to the Department and U.S. Fish and Wildlife Service for review and approval a design for channel modifications to the river's bottom in the bypassed reach. The



design must be consistent with the requirements of the Settlement Agreement, in particular Section 3.2.3, including Figure 2. The design plans must include a survey of the existing channel and plan of the proposed changes. The plan shall also include details regarding erosion and sediment control during the channel modifications. The plan must demonstrate that work in the channel will comply with the goals and performance standards set forth in paragraph 21 below and applicable state water quality standards.

**10. Flow and Water Level Monitoring.** In accordance with the Settlement Agreement, in particular Section 3.4, the Certificate Holder must submit to FERC a Stream Flow and Water Level Monitoring Plan within 6 months of issuance of the FERC operating license. The plan must be developed in consultation with all settlement signatories. The plan must include the information referenced in Section 3.4 of the Settlement Agreement. All release structures, channel modifications, and ancillary equipment required by the Settlement Agreement shall be made operational and fully calibrated, as appropriate, within 18 months of issuance of the FERC operating license.

**11. Fish Protection/Passage.** Within 18 months of issuance of the FERC operating license the certificate holder shall complete the Phase I Fish Protection and Downstream Passage measures described in the settlement, particularly Section 3.5. All portions of the construction of the Phase I Fish Protection and Downstream Passage measures located in the power canal shall be completed in conjunction with and in compliance with the pertinent provisions of construction requirements paragraph 15 below.

**12. "Fish Friendly Turbine Installation.** Within 5 years of issuance of the FERC operating license the certificate holder is permitted to install a new "fish friendly" turbine and powerhouse to provide alternative Phase II fish protection and downstream passage measures described in the settlement, particularly Section 3.6.

**13. Fishway Effectiveness Testing.** The Certificate Holder shall develop a plan for fishway effectiveness testing in accordance with the Settlement Agreement, in particular Section 3.7. The plan must be approved by US Fish and Wildlife Service, NOAA Fisheries and the Department.

**14. Recreational Access and Usage.** Within 18 months of issuance of the FERC operating license the Certificate Holder shall develop recreational access and facilities at the project, as provided for in the Settlement Agreement, in particular Section 3.9, including public access trails, signage, and fishing access.

## CONSTRUCTION REQUIREMENTS

**15. Power Canal Excavation/Sediment Removal.** The Certificate Holder proposes to increase the hydraulic capacity of the power canal. Within 1 year of the issuance of the FERC operating license the Certificate Holder shall submit to the Department for review and approval a comprehensive bedrock excavation and sediment removal plan for the power canal that meets the goals and performance standards set forth in paragraph 18 below and that includes the following information;

- a) details regarding the temporary, or if appropriate, the permanent relocation of the City of Cohoes water intake during the period of time the power canal will be dewatered and excavated;
- b) a bedrock excavation, sediment removal plan including existing and proposed grades and



contours. The final quantity of bedrock and sediment to be removed and the final grades to be reached must be provided. The plan must also include all details regarding bank modifications and stabilization measures required or proposed as part of the excavation;

c) details regarding the methods for dewatering the power canal prior to commencing construction, including, but not limited to the following; initial dewatering using the gatehouse, the management of water entering the canal after dewatering has taken place and work has commenced (i.e., stormwater outfalls to the canal and direct precipitation).;

d) a sampling protocol for characterizing the testing of the sediment to be removed that is consistent with the Department's Technical and Operations Guidance 5.1.9 or applicable guidelines/regulations. The sampling protocol should indicate that sampling results need to be submitted to the Department 30 days prior to the commencement of work in the power canal;

e) a disposal protocol specifying the proposed final disposition of the material removed from the power canal. The disposal protocol must recognize that disposal options will be based on analytical sediment sampling results and current applicable regulations/guidelines. The protocol must state that the Department has final approval authority of disposal locations;

f) an erosion and sediment control plan, prepared in accordance with applicable state standards, addressing the management of stormwater from all activities related to the bedrock excavation and sediment removal, including but not limited to, temporary storage areas and any final onsite disposal areas.

For all maintenance dredging/sediment removal during the remainder of the permit term the Certificate Holder shall submit a plan conforming with the requirements provided in paragraph 18 at least 90 days prior to the commencement of work.

The above plan and all work covered by the plan must meet the goals and performance standards set forth in paragraph 18 below.

**16. Powerhouse Construction.** Prior to any work at the powerhouse, including the installation of fish protection and passage measures and new generator/turbine, that requires the disturbance of soil or bedrock, the Certificate Holder shall submit to the Department for review and approval a pollution prevention plan that provides details of the following;

a) a dewatering plan for the work area, including how the work area will be isolated so that work may be completed in the dry. This include details of cofferdams or similar structures both above the powerhouse and in the tailrace;

b) a pollution prevention plan addressing construction erosion and control measures and post construction stormwater discharges from all disturbed areas, including temporary and permanently disturbed areas.

The above plan and all work covered by the plan must meet the goals and performance standards set forth in paragraph 18 below.

**17. Other Construction Activities.** At least 30 days prior to commencing any other activities within the



project boundary, including but not limited to the recreation enhancement measures referenced in Section 3.9 of the Settlement Agreement, which could adversely affect water quality, the Certificate Holder must submit to the Department for review and approval an erosion and sediment control plan. The erosion control plan and the work covered by the plan must meet the goals and performance standards set forth in paragraph 18 below. If future maintenance dredging is planned conditions in paragraph 15 above shall apply.

**18. Goals and Performance Standards.** At minimum, the certificate holder must accomplish the following objectives:

- a) isolate in-stream work from the flow of water and prevent discolored (turbid) discharges and sediments from entering the waters of the river due to excavation, dewatering and construction activities;
- b) Exclude the use of heavy construction equipment below the mean high water line until the work area is protected by an approved structure and dewatered, except where an emergency response requires immediate action;
- c) Stabilize any disturbed banks by grading to an appropriate slope, followed by armoring or vegetating as appropriate, to prevent erosion and sedimentation into the waterbody;
- d) Minimize soil disturbance, provide appropriate grading and temporary and permanent re-vegetation of stockpiles and other disturbed areas to minimize erosion/ sedimentation potential;
- e) Protect all waters from contamination by deleterious materials such as wet concrete, gasoline, solvents, epoxy resins or other materials used in the construction, maintenance and operation of the project;
- f) Install effective erosion control measures on the downslope of all disturbed areas and maintain them in a fully functional condition. These erosion control measures are to be installed before commencing any other activities involving soil disturbance;
- g) Ensure complete removal of all dredged and excavated material, debris or excess materials from construction, from the bed and banks of all water areas to an approved upland disposal site;
- h) Ensure that all temporary fill and other materials placed in the waters of the river are completely removed, immediately upon completion of construction, unless otherwise directed by the Department.

**19. Turbidity Monitoring During Construction.** During construction related activities, the Certificate Holder will monitor the waters of the river at a point immediately upstream of project activities and at a second point no more than 100 feet downstream from any discharge point or other potential source of turbidity. The Certificate Holder specifically agrees that if, at any time, turbidity measurements from the downstream locations exceed the measurements from the locations upstream of the work areas, all related construction on the project will cease until the source of the turbidity is discovered and the situation is corrected.

**20. Maintenance of River Flows.** During all periods of construction, flows immediately downstream of



work sites shall be maintained in accordance with condition 8 of this certificate (Run of River Operations).

**21. Stormwater SPDES.** All activities at the project requiring the disturbance of greater than one acre must obtain coverage under the SPDES General Permit for Stormwater Discharges from Construction Activities (GP-02-01).

### WATER QUALITY CERTIFICATION SPECIFIC CONDITIONS

**1. Water Quality Certification** The NYS Department of Environmental Conservation hereby certifies that the subject project will not contravene effluent limitations or other limitations or standards under Sections 301, 302, 303, 306 and 307 of the Clean Water Act of 1977 (PL 95-217) provided that all of the conditions listed herein are met.

### GENERAL CONDITIONS - Apply to ALL Authorized Permits:

**1. Facility Inspection by the Department** The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the Certificate Holder is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71-0301 and SAPA 401(3).

The Certificate Holder shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

**2. Relationship of this Permit to Other Department Orders and Determinations** Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

**3. Applications for Permit Renewals or Modifications** The Certificate Holder must submit a separate written application to the Department for renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing.

**4. Department Contacts.** All contacts with the concerning this certificate, including submission of the information required by the above Natural Resource Permit Conditions and all applications for permit modification or renewal are to be submitted to:

NYSDEC - Headquarters  
Chief Permit Administrator,  
Division of Environmental Permits  
625 Broadway





Albany NY 12233-1750

**5. Permit Modifications, Suspensions and Revocations by the Department** The Department reserves the right to exercise all available authority to modify, suspend or revoke this permit. The grounds for modification, suspension or revocation include:

- a. materially false or inaccurate statements in the permit application or supporting papers;
- b. failure by the Certificate Holder to comply with any terms or conditions of the permit;
- c. exceeding the scope of the project as described in the permit application;
- d. newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;
- e. noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

**6. Permit Transfers** Permits are transferrable unless specifically prohibited by statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.

### NOTIFICATION OF OTHER CERTIFICATE HOLDER OBLIGATIONS

**Item A: Certificate Holder Accepts Legal Responsibility and Agrees to Indemnification**

The Certificate Holder expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the Certificate Holder's acts or omissions in connection with the Certificate Holder's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

**Item B: Certificate Holder's Contractors to Comply with Permit**

The Certificate Holder is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the Certificate Holder's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the Certificate Holder.

**Item C: Certificate Holder Responsible for Obtaining Other Required Permits**

The Certificate Holder is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.



**Item D: No Right to Trespass or Interfere with Riparian Rights**

This permit does not convey to the Certificate Holder any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.