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May 11, 2021

VIA USPS & EMAIL

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Re: Meet & Confer Regarding NYWD 2019 "Formal Demand"

Dear Ms. Brenner & Mr. Stouder:

Thank you for a productive discussion at our May 10, 2021 meet and confer concerning NYWD's April 20, 2021 "formal demand" for additional revenues associated with fiscal and calendar year 2019. Enclosed, again, is the Agency's power point provided before and during the meet and confer session.

The Agency Demonstrated Conclusively that NYWD is Not Entitled to a Share of Net Revenue in 2019 Because There Was No Net Revenue

As we discussed, NYWD has grossly oversimplified the calculation of net revenues under the 2005 Agreement. NYWD's incorrect approach, as detailed in your April 20, 2021 "formal demand", was to take one page from the Agency's January 28, 2020 Board Packet and claim that "the reserve balance for 2019 was overfunded by \$5,927,685 (\$25,497,635 minus \$9,569,950)." Accounting for net revenues is not so simple, as you now know.

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The monthly financial report included in the Board package each month is designed to provide the Agency's Board of Directors, management, and interested members of the public with information for budgetary decisions. The actual receipt of revenue is compared with budgeted revenues and the actual recognition of expenses are compared with budgeted operating and capital appropriations for monitoring and planning purposes. The document utilized by NYWD is not designed to report revenues, expenses and fund balances in accordance with full governmental accounting standards, nor provide a comprehensive financial report of the whole Agency or for calculation and distribution of net revenue pursuant to the 2005 Agreement. Specific differences include depreciation and other non-cash revenues or expenses, long-term receivables or payables and deferred inflows and outflows. The purpose of the report cited by NYWD is to assist with determining if and when adequate dollars are available for operations and capital improvements and acquisitions in the current fiscal year. It should not be used, as NYWD attempted, as the sole method for determining net revenue.

NYWD's error is easily seen by reference to the power point presentation. The "ending balance" referenced by NYWD is a number that is adjusted on a monthly timestep as revenue is received and as expenses are booked against revenue. The January 28, 2020 financial report utilized as the sole supporting document in NYWD's "formal demand", does not fully capture all 2019 revenue and expenses. For example, the April 28, 2020 board report (power point, p. 11) shows an ending balance of \$24,515,495, approximately \$1 million less than the January report cited by NYWD. It is not until the independent auditors' report that a complete and final picture of JFOF revenue and expenses is clear. For 2019, the independent auditor determined that the 2019 change in net position was negative \$1,179,365, meaning there was no net revenue to distribute.

As requested by Mr. Bryan, enclosed is a list of projects totaling the \$3,500,770 "increase in capital assets" referenced in the independent auditors' report and duplicated at the Agency's power point presentation, page 12.

If you have additional questions related to NYWD's formal demand for the 2019 fiscal year, please provide them and we can determine if additional meet and confer sessions would be necessary or if less formal discussions would be appropriate.

NYWD's Accountant, Tim Bryan, Confirmed the Content of Prior Discussions and NYWD's Mischaracterization of those Discussions

We appreciate Mr. Bryan sharing his version of prior discussions with Agency staff about net revenues and how those discussions were "conceptual" and amounted to a "back of the napkin" discussion about forecasted net revenue from the Agency's 2021 budget. These prior discussions were not associated with 2019. Also, the discussions concerned the Agency's current 2021 budget and a forecast of revenues and expenses that, if realized, would support a distribution of net revenue. We emphasize "forecast" because Agency budgets are an attempt, not guarantee, to predict the highly volatile hydroelectric power market and associated expenses in operating and maintaining a power project. If the 2021 forecast were to come true, then NYWD would be entitled to its share of net revenues. However, it is still too early to state

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whether net revenues for 2021 will occur. And it is certainly inappropriate to take this conceptual discussion about 2021 and use it in support of NYWD's 2019 claim.

The broader point is that Mr. Bryan confirmed your mischaracterization of these prior discussions. We reiterate our objection to your repeated attempt to characterize these prior, unrelated and "conceptual" discussions as "unqualifiedly" agreement, or an "admission" that NYWD is owed additional net revenue from 2019. It is not true, as Mr. Bryan confirmed.

Request for Further Board-to-Board Discussion

It became clear during the meeting that you and Mr. Bryan have more foundational questions about the Agency's standards and practices to account for JFOF revenue and expenses. These questions are unrelated to NYWD's 2019 formal demand and, thus, should not be addressed in a meet and confer session. As we have repeatedly offered in the past, we implore NYWD to agree to a direct, Board-to-Board informal discussions structured as a workshop. We simply cannot fathom why NYWD objects to a discussion about an issue of such interest to our respective public agency clients. Please advise as to NYWD's availability for a joint public workshop.

Very truly yours,

MINASIAN, MEITH,
SOARES, SEXTON & COOPER, LLP

By: 

DUSTIN C. COOPER

DCC/ast

cc:

Rath Moseley, General Manager South Feather Water & Power Agency