



City of Lowell
Office of the City Manager

*In CC packets
4/24/09 done
by Law Dept.*

City Hall
375 Merrimack Street
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Bernard F. Lynch
City Manager

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April 24, 2009

Mayor Edward "Bud" Caulfield
and
Members of the City Council

RE: Pawtucket Dam Flashboard Issues

Dear Mayor Caulfield and Members of the City Council:

*by M. Caulfield
on 10/28/08*

I write to update the Council on the actions taken in response to the Council's motions on Tuesday, April 21, 2009 regarding the flashboard issues at the Pawtucket Dam. Enclosed please find a letter sent to ENEL/Boott Hydropower, Inc., regarding the institution of operating procedures to monitor compliance with the Wang Agreement. Also, please find the City's correspondence to FERC noting in no uncertain terms our insistence that any flashboard system placed on the Pawtucket Dam comply with the height and seasonal restrictions contained within the Wang Agreement.

Additionally, pending response to the City's letter to ENEL, the Law Department is preparing to use all available means to seek compliance with the Wang Agreement.

Very truly yours,

Bernard F. Lynch
City Manager

Enc.

CHRISTINE P. O'CONNOR
City Solicitor

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CITY OF LOWELL - LAW DEPARTMENT
375 MERRIMACK STREET - 3RD FL
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April 23, 2009

Kevin M. Webb
Enel North America, Inc.
One Tech Drive, Suite 220
Andover, MA 01810

RE: Flashboard System – Compliance with the Wang Agreement

Mr. Webb,

The Lowell City Council has passed a motion regarding Enel's compliance, or lack thereof, with the August 26, 1980 agreement, commonly referred to as the Wang Agreement. As a result of this motion, the City requests that you contact us as soon as possible to develop a set of standard operating procedures with a maintenance schedule for Boot Hydro Inc./Enel. The operating procedures will include the following:

- 1.) The City of Lowell enforcing and monitoring the flashboard maintenance at 4' March-June 5' July- February;
- 2.) The City of Lowell being notified and being able to inspect the maintenance of the flashboards and pins by Boot Hydro Inc/Enel;
- 3.) The City of Lowell developing a maintenance plan for the proper removal and disposal of debris and trash from the Merrimack River at the Pawtucket Dam and its gatehouse structures with Boot Hydro Inc/ Enel;
- 4.) The City of Lowell notifying National Park Services of the above procedures and NPS having the option of sending someone to inspect and monitor with the City of Lowell;

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Kevin M. Webb
Enel North America, Inc.
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5.) The City of Lowell sending or posting a public notice of all scheduled monitoring and maintenance procedures.

Your prompt attention and anticipated cooperation in this matter is appreciated.

Very truly yours,



R. Eric Slagle
Asst. City Solicitor

cc: Members of the City Council
Bernard F. Lynch, City Manager
Christine P. O'Connor, City Solicitor
Lisa E. DeMeo, City Engineer

Joseph Morgan
Director, Division of Hydropower Admin & Compliance
Vedula Sarma
Division of Hydropower Administration and Compliance
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

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April 24, 2009

Mr. Joseph Morgan, Director
Mr. Vedula Sarma
Division of Hydropower Administration and Compliance
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Boott Hydropower, Inc. - Project Number P-2790
Pawtucket Dam

Dear Mssrs. Morgan and Sarma:

I have been instructed by the Lowell City Council to inform you that on Tuesday, April 21, 2009, the Lowell City Council passed the following motion.

"We, as resident stakeholders of Pawtucketville and members of the Lowell Flood Owners Group hereby request a voice vote of our City Council in support of the seasonal 4 foot high flashboards design to be used from March thru June of each year at the Pawtucketville Dam which is called for in the binding codicil agreement made in 1981 between the dam owners and Dr. An Wang, known as the Wang Agreement. We also request a pledge of vigorous enforcement by the City of this so-called Wang agreement as it relates to our historic 1875 Pawtucket Dam."

As you are aware, originally there was an agreement between two private entities, the Proprietors of the Locks and Canals on Merrimack River and Wang Laboratories, Inc. regarding the height of structures (including flashboards) to hold back water rising over the level of the Pawtucket Dam, signed on August 26, 1980 (the "Agreement"). The substance of the Agreement is that the Proprietors agreed not to install structures more than 5 feet above the dam from July through February, and 4 feet above the dam from March through June.

It is the position of the City that the flashboard system put into place by ENEL must comply with the provisions of the Agreement.

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Federal Energy Regulatory Commission
Attn: Joseph Morgan
Washington, D.C. 20426
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The City of Lowell requests that any decision made by FERC with regards to a flashback system on the Pawtucket Dam mandate compliance with the private Agreement between ENEL and the City of Lowell.

Please feel free to contact me if you have any questions.

Sincerely,



R. Eric Slagle
Asst. City Solicitor

cc: Members of the City Council
Bernard F. Lynch, City Manager
Christine P. O'Connor, City Solicitor
Lisa E. DeMeo, City Engineer

Kevin M. Webb
Environmental Affairs Coordinator
Boott Hydropower, Inc.
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