

Case 10-T-0139

Champlain-Hudson Power Express Project Environmental Trust Governance Agreement

This Environmental Trust Governance Agreement (the “Agreement”), entered into between Champlain Hudson Power Express, Inc. and CHPE Properties (collectively, the “Certificate Holders”); the Staff of the New York State Department of Public Service (“DPS Staff”); the New York State Department of Environmental Conservation (“NYSDEC”), the New York State Department of State (“NYSDOS”), the New York State Adirondack Park Agency (“APA”), the City of New York, New York (“New York City”), the New York State Council of Trout Unlimited (“NYSCTU”), Riverkeeper, Inc. (“Riverkeeper”), and Scenic Hudson, Inc. (“Scenic Hudson”) (collectively, the “Members of the Governance Committee for the Environmental Trust,” or the “Governance Committee” and individually, a “Member”),
WITNESSETH THAT:

WHEREAS, on April 18, 2013, the New York State Public Service Commission (the “Commission”) issued an Order Granting Certificate of Environmental Compatibility and Public Need (“Certificate”) that approved the Joint Proposal of Settlement (the “JP”) filed by the Signatory Parties thereto (the “Signatory Parties”) in Case 10-T-0139 (the “Order”); and

WHEREAS, the Certificate authorized Certificate Holders to construct and operate a 1,000 MW High Voltage, Direct Current transmission facility running from New York’s border with the Province of Quebec to New York City (the “Facility”), portions of which are to be located in the waters of Lake Champlain and the Hudson, Harlem and East Rivers; and

WHEREAS, in recognition of the ecological significance of the watersheds of Lake Champlain, and the Hudson, Harlem and East Rivers, the Certificate provides that Certificate Holders will supply \$117 million in funds to establish and maintain the Hudson River and Lake Champlain Habitat Enhancement, Restoration, and Research/Habitat Improvement Project Trust (the “Trust”) for the benefit of these waterbodies on the terms and conditions set out therein; and

WHEREAS, the Order contains the Certificate Conditions approved by the Commission to govern construction and operation of the Facility (the “Certificate Conditions”); and Section U of the Certificate Conditions includes the provisions regarding the establishment of the Trust; and

WHEREAS, Certificate Condition 165 provides that the Trust shall be established solely for the purposes provided therein, which include protecting, restoring, and improving aquatic habitats and fisheries resources in the Hudson River Estuary, the Harlem and East Rivers, Lake Champlain, and their tributaries, (collectively, the “Trust Area”) in order to minimize, mitigate, study, and/or compensate for the short-term adverse aquatic impacts and potential long-term aquatic impacts and risks to these water bodies from construction and operation of the Facility and for the administration of the Trust to the extent expressly authorized in the Certificate; and

WHEREAS, the types of projects for which Certificate Condition 165 authorizes monies in the Trust to be used include, but are not limited to, studies, monitoring, conservation, restoration, preservation, clean-up, data sampling and analysis, and education and outreach relating to fish, wildlife, plant, habitat, and other natural and cultural resources in the Trust Area.

NOW, THEREFORE, in exchange for the covenants contained herein, the Members of the Governance Committee hereby stipulate and agree as follows:

I. GOVERNANCE AND EFFECTIVE DATE

- A. Governance.** The operation of the Trust will be governed by a Governance Committee in accordance with the terms and conditions of the Certificate, the JP, and this Agreement. In the event of any conflict between the provisions of this Agreement and any of the provisions of the Certificate or the JP, the provisions of the Certificate (to the extent pertinent) or of the JP (if not in conflict with the Certificate) shall govern.
- B. Monies in the Trust.** Monies in the Trust will be directed to specific environmental and conservation projects as authorized in Certificate Condition 165 in accordance with the procedures set forth in this Agreement. In no event will the Trust be overdrawn to provide funding to projects hereunder or for any other purpose.
- C. Effective Date.** This Agreement shall be effective on the latter of: (1) the date on which this Agreement is ratified by all of the Members of the Governance Committee; (2) the date on which this Agreement is accepted or approved by the Commission; or (3) to the extent required by law, the date on which this Agreement is accepted or approved by the New York Attorney General and the Comptroller of New York State.
- D. Definitions.** Any term that has not been expressly defined in this Agreement shall have the meaning given in the Certificate Conditions.
- E. Amendments.** This Agreement may only be amended by a written instrument signed by the Certificate Holders and by a three-quarters (3/4) majority of the Governance Committee Members, including Certificate Holders. Any amendment will be filed with the Commission.

II. MEMBERSHIP

- A. Current Membership.** In accordance with the provisions of Certificate Condition 165, the initial Members of the Governance Committee shall be: Certificate Holders, DPS Staff, NYSDEC, NYSDOS, APA, New York City, NYSCTU, Riverkeeper, and Scenic Hudson. Each Member shall be entitled to one vote on the Governance Committee. For the purposes of this provision, Certificate Holders shall be collectively regarded as a single party.
- B. Chairperson, Vice Chairperson and Secretary.** At the first meeting of the Governance Committee and each year thereafter, the Members shall select by a two-thirds (2/3) majority vote a Chairperson and Vice Chairperson from among the membership. The Chairperson

shall conduct the meeting and serve as a spokesperson for the Governance Committee. In the absence of the Chairperson, the Vice Chairperson shall substitute for the current Chairperson. A Secretary shall also be selected by a two-thirds (2/3) majority vote of the Governance Committee Members in attendance to keep minutes and to maintain the Governance Committee's records.

- C. Succession of Membership.** Any Member representative may resign at any time after the Effective Date by delivering a resignation in writing to the Governance Committee. If a Member dissolves or resigns, the other Members of the Governance Committee may elect a successor to that Member by a two-thirds majority vote.
- D. Trust Administrator.** The Governance Committee may designate a third-party administrator (the "Trust Administrator") as described in greater detail in Article IV of this Agreement to assist in the conduct of its business and for the administration of the Trust for tasks including but not limited to developing: (A) cash flow schedules for the Trust expenditures; (B) measures to track administrative costs; and (C) associated auditing and reporting tasks.
- E. Technical Working Groups.** The Governance Committee may establish Technical Working Groups, one each for the Hudson, Harlem and East Rivers region and the Lake Champlain region, for the purpose of working with the Governance Committee and the Trust Administrator to provide scientific and technical advice, support and recommendations. Upon request of the Trust Administrator, the Technical Working Groups may evaluate and assist with the implementation of the projects approved for funding. Members of the Technical Working Groups will be selected by a two-thirds (2/3) majority vote of the Members of the Governance Committee in attendance. Technical Working Group members need not be members of the Governance Committee but shall consist of Signatory Parties to the JP, interested state and federal resource agencies, or others which have demonstrated technical expertise related to the protection, restoration and study of aquatic habitats in the relevant water bodies. Technical Working Group members may be added, removed or replaced at the option of the Governance Committee by a two-thirds (2/3) majority vote of the Members of the Governance Committee in attendance.
- F. Sub-Committees.** The Governance Committee may create or eliminate sub-committees as it determines to be appropriate, each of which shall include two or more Committee Members and each of which shall have authority as determined by the Governance Committee.
- G. Compensation.** Governance Committee and Technical Working Group Members shall not receive any compensation from the Trust for their services and shall not be reimbursed by the Trust for their expenses incurred related to service on the Governance Committee or Technical Working Group.
- H. Contributions to the Trust.** Annual payments and the nature of the contributions to the Trust shall be governed by Certificate Condition 165.
- I. Member's Authorized Representative.** Each Governance Committee Member representative shall file with the Governance Committee the name and contact information of

the Member's authorized representative and one or more alternates that are authorized to act on the Member's behalf. Only the authorized representative or in lieu of the authorized representative, an alternate, may cast votes on behalf of the Member.

- J.** The Records Access Officer for the Governance Committee will be the Department of Public Service's Records Access Officer.

III. MEETINGS

- A. Notice.** The Governance Committee will meet a minimum of four times a year on a schedule to be determined by the Governance Committee. The Governance Committee may convene additional meetings as necessary. Meetings of the Governance Committee shall be convened by the Chairperson and may be held at any place within the State of New York as the Governance Committee may from time to time fix, or as shall be specified in the notice thereof. Written notice, which for these purposes may be transmitted electronically, shall be sent to the authorized representative(s) of each Member at least fourteen (14) days in advance of the day the meeting is to be held. In the case of a special meeting required by urgent circumstances, any Member, with the concurrence of the Chairperson may call a meeting by giving not less than three (3) days' notice to all Governance Committee Members. Notice of a meeting need not be given to any Member's representative who submits a signed waiver of notice before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to them.
- B. Quorum.** Two-thirds (2/3) of the Governance Committee must be present to constitute a quorum for the transaction of Governance Committee business. If a Member's representative is absent from two successive meetings, the quorum will be revised to exclude that Member's representative for future actions. When and if that Member's representative returns, the quorum will return to two-thirds (2/3) of all Governance Committee Members.
- C. Voting.** Unless otherwise provided in this Agreement, the vote of a two-thirds (2/3) majority of Members present at the time of the vote, if a quorum is present at such time, shall constitute an act of the Governance Committee.
- D. Other Requirements.**
Meetings of the Governance Committee shall be conducted in compliance with the Open Meetings Law, Article 7 of the Public Officers Law.

IV. TRUST ADMINISTRATOR

- A. Selection.**
 - 1. A third-party Trust Administrator will be selected to supervise the Trustee holding the monies in the Trust and to administer the projects to be funded by the trust.

2. The Governance Committee shall have the authority to replace the Trust Administrator by a vote of three-quarters (3/4) of the Members. Any such replacement shall be selected in accordance with the provisions of this Section.
3. The Request for Expression of Interest for Trust Administrator for the Hudson River and Lake Champlain Habitat Enhancement, Restoration, and Research/Habitat Improvement Project Trust setting out the criteria by which potential Trust Administrators shall be evaluated is attached hereto as Appendix A.

B. Responsibilities.

The duties of the Trust Administrator shall include:

1. Ensuring that the Trustee maintains investment accounts on behalf of the Trust at one or more financial institution(s), subject to the condition that each such financial institution is a member of the Federal Deposit Insurance Corporation, is accredited by and does business in New York State. For accounting purposes, the Trust shall be distinguishable from all other accounts maintained by the Trust Administrator.
2. Managing, investing and reinvesting the monies in the Trust to generate returns, provided that investment income accruing to the Trust shall be credited back to the Trust, and shall be used to carry out the purposes of the Trust as set forth in Certificate Condition 165.
3. Overseeing the cash flow of the Trust, including payments to grantees and optimizing timing of disbursements with respect to the resources of the Trust, the schedule of contributions to the Trust, and anticipated outlays due to project commitments.
4. Providing reports to the Governance Committee on the financial activities, projects and status of the Trust within such time limits as the Governance Committee shall specify.
5. Convening two Technical Working Groups, one each for the Lake Champlain and Hudson, Harlem, and East Rivers regions.
6. With guidance from the Governance Committee and the Technical Working Groups, developing Requests for Proposals (“RFPs”) for projects that respond to the technical and programmatic priorities of the Trust.
7. Preparing and overseeing administration of RFPs, entering into contracts and/or Recipient Agreements for projects selected by the Governance Committee, paying for Recipients’ requests for disbursements in accordance with procedures set forth in respective contracts and/or Recipient Agreements
8. Managing the grant competitions, including publishing RFPs, accepting proposals, coordinating proposal reviews with the Technical Working Groups, and providing granting recommendations to the Governance Committee.

9. Tracking the funded projects and receiving reports from grantees.
10. Providing reports to the Governance Committee on the progress of funded projects with such time limits as the Governance Committee shall specify.
11. Maintaining a database of funded proposals, final reports, and subsequent publications and making them publically accessible.
12. Participating with the Technical Working Groups in annual technical reviews to evaluate the progress and results of projects financed by the Trust.
13. Submitting Trust activity reports to the Governance Committee semi-annually by January 15 and July 15 of each year the Trust is in existence. The Trust Administrator shall report on deposits, disbursements, fees, and investment income during each semi-annual period, with a reconciliation of the remaining, un-obligated balance of the Trust. The reports also shall include the current status of all active Recipient Agreements.

V. PROJECT SELECTION

The Governance Committee may delegate the authority to identify projects to be considered for financing by the Trust to the Trust Administrator, provided however that final authority to approve projects for funding will be retained by the Governance Committee. In determining the projects to be financed from the Trust, the Governance Committee shall apply the requirements of Certificate Condition 165 to determine whether project proposals are related to the Hudson River, Harlem River, East River or Lake Champlain, respectively, and within the purpose of the Certificate Conditions and this Agreement.

A. Priority Projects.

1. The “Priority Projects” listed in Appendix B attached hereto, totaling approximately \$32.5 million, have been pre-approved for funding through the Trust and shall be implemented by the Trust Administrator pursuant to a schedule to be developed by the Governance Committee in order to meet the primary objectives of the Trust during its initial phase. The Governance Committee, by a three-quarters (3/4) vote, may determine, on the basis of changed circumstances, that a Priority Project should not be implemented in whole or in part.
2. In accordance with Certificate Condition 165, no more than 75% of the monies to be provided by Certificate Holders to the Trust in any year may be designated for such Priority Projects during the first fifteen (15) years of the Trust’s existence or until the Priority Projects have been completed.

B. Other Projects.

1. Project ideas shall from time to time be solicited from the Governance Committee Members, other Federal and State Agencies or municipalities, the Trust Administrator, the Technical Working Groups, individuals, and organizations located along the route of the Facility and shall be submitted to the Governance Committee for consideration and approval.
2. The Governance Committee shall provide direction regarding the solicitation of potential projects, the selection of projects, and the disposition of monies from the Trust to pay for selected projects by and through the Trust Administrator.

If the Governance Committee approves a solicitation for project proposals:

- i. The Trust Administrator will prepare and implement a customized RFP and recommend projects submitted in response to such RFP for approval and funding by the Governance Committee. Any such RFP shall include a clear statement of the purpose of this Trust, as established in Certificate Condition 165. The RFP will be issued through the Trust Administrator's website.
 - ii. The Governance Committee will verify that any projects selected and presented to the Governance Committee by the Trust Administrator for approval and funding are in accordance with the purposes set forth in Certificate Condition 165.
 - iii. The Governance Committee may authorize the Trust Administrator to negotiate and execute Recipient Agreements on behalf of the Trust, and make corresponding disbursements of monies from the Trust, for the performance of the projects selected according to this Agreement.
 - iv. The Trust Administrator will participate in annual technical reviews to evaluate the success of projects funded by the Trust. In such event, the Trust Administrator shall make available such personnel and other resources as are reasonably necessary to successfully participate in such reviews.
3. The Governance Committee may terminate or cancel a particular project approved under this section V.B., in whole or in part.

VI. CONFLICTS OF INTEREST

- A.** Member's representatives shall take all reasonable steps to avoid any action or circumstance that might result in, or create the appearance of:
1. Undermining their independence and impartiality of action;
 2. Taking official action on the basis of unfair considerations, unrelated to the merits of the matter;

3. Using their positions on the Governance Committee for the advancement of personal or parochial interest; or
 4. Using their positions on the Governance Committee to secure special privileges or exemptions.
- B.** In the case of an actual or perceived conflict of interest of a Member's representative regarding a pending action of the Governance Committee, the Member's representative may cure this conflict by abstaining from the vote(s) and decision-making related to said specific action.

VII. INDEMNIFICATION

The Trust shall indemnify, hold harmless and defend all Members of the Governance Committee from liability for any actions and/or inactions of the Trustee, the Trust Administrator, or any representative(s) of any of them. The Trust shall also indemnify, hold harmless and defend any person made, or threatened to be made, a party to any action or proceeding by reason of the fact that he or she was a representative of a Member of the Governance Committee, and any other person whom it shall have the power to indemnify, against any judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees.

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