

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on June 13, 2013

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
James L. Larocca
Gregg C. Sayre

CASE 10-T-0139 - Application of Champlain Hudson Power Express, Inc. for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII of the PSL for the Construction, Operation and Maintenance of a High Voltage Direct Current Circuit from the Canadian Border to New York City.

ORDER APPROVING GOVERNANCE AGREEMENT

(Issued and Effective June 17, 2013)

BY THE COMMISSION:

INTRODUCTION

We recently granted a Certificate of Environmental Compatibility and Public Need (Certificate) to Champlain Hudson Power Express, Inc. and CHPE Properties, Inc. (Certificate Holders) pursuant to Article VII of the Public Service Law (PSL).¹ The Certificate Holders were authorized to construct and operate an electric transmission facility extending from the New

¹ Case 10-T-0139, Champlain Hudson Power Express, Inc., Order Granting Certificate of environmental Compatibility and Public Need (issued April 18, 2013).

York-Canada border to New York City, subject to numerous conditions, including Condition 165.²

In a petition dated May 13, 2013, the Certificate Holders filed for our approval an agreement (the Governance Agreement) to govern the administration and operation of the Hudson River and Lake Champlain Habitat Enhancement, Restoration, and Research/Habitat Improvement Project Trust (the Trust), as contemplated in Condition 165(c). In a letter dated May 22, 2013 supplementing the petition, the Certificate Holders filed a revised Governance Agreement to delete references to the Office of Parks, Recreation and Historic Preservation (OPR&HP). The Governance Agreement was also revised to reduce the advance notice required for regular meetings of the Governance Committee from 30 to 14 days.

By a notice issued May 15, 2013, the Acting Secretary solicited comments on the petition. The notice specified a deadline for the receipt of comments of May 28, 2013. No comments regarding the petition were received.

THE PETITION

The petition states that the Governance Agreement was developed in consultation with the designated members of the Governance Committee to be established pursuant to Certificate Condition 165(c).³ According to the petition, prompt approval of the Governance Agreement would enable the Governance Committee to meet to consider the selection of a trust administrator and a trustee bank to manage the funds of the Trust on a day-to-day basis so a Trust Agreement can be negotiated and filed with the

² Case 10-T-0139, supra. Ordering Clause 4 adopted the Certificate Conditions set forth in Appendix C to the Joint Proposal filed in the proceeding, which Conditions were attached to the Certificate.

³ Signature pages of representatives of the members of the Governance Committee were filed on June 4, 2013.

Commission by August 16, 2013, as required by Certificate Condition 165(a). The May 22, 2013 letter explains that references to OPR&HP were deleted from the Governance Agreement because that agency was not listed in Condition 165 as a member of the Governance Committee to be established pursuant to that Condition and that OPR&HP had requested that it not be included as a prospective member of the Governance Committee based on its conclusion that its interests in the management of the Trust would be adequately represented by the Department of Environmental Conservation. The letter also explains that the change to shorten the advance notice period for regular meetings of the Governance Committee was based on the experience of the parties in attempting to schedule meeting dates. Moreover, the letter indicates that both changes are either supported or not opposed by those designated to be members of the Governance Committee.

DISCUSSION AND CONCLUSION

As noted in the May 15, 2013 notice, the Governance Agreement specifies the manner in which the Trust will be governed, including rules regarding Governance Committee membership, meetings, designation and duties of a Trust Administrator, the use of technical working groups, project selection, conflicts of interest, and indemnification. We adopted Certificate Condition 165 (as set forth in the Joint Proposal in this proceeding) as a fitting way to exercise our jurisdiction under PSL Article VII that also recognizes the interests of other state agencies, New York City and private organization. The Governance Agreement appropriately effectuates Condition 165 and is approved.

The Commission orders:

1. The petition of Champlain Hudson Power Express, Inc. and CHPE Properties, Inc. dated May 13, 2013 (as supplemented) is granted. The Governance Agreement as revised on May 22, 2013 is approved.

2. This proceeding is continued.

By the Commission,

(SIGNED)

JEFFREY C. COHEN
Acting Secretary