

NIAGARA POWER PROJECT RELICENSING SETTLEMENT GREENWAY FUNDS

NEW YORK STATE OFFICE PARKS, RECREATION AND HISTORIC PRESERVATION (STATE PARK) STANDING COMMITTEE PROTOCOLS

I. INTRODUCTION

During the course of the alternative relicensing process for the Niagara Power Project, the New York Power Authority (NYPA) executed various settlement agreements with federal, tribal, state, and local governmental bodies and with a number of non-governmental organizations. Provisions set forth in certain of the settlement agreements established funds to support the creation and maintenance of a Niagara River Greenway (Greenway). These settlement provisions also establish “standing committees” to determine whether, and at what level, proposed Greenway projects will be funded. The following protocols are provided to assist the members of the New York State Office of Parks, Recreation and Historic Preservation (STATE PARK) Standing Committee in the administration of the settlement provisions relative to the Greenway and establish minimum criteria governing the deliberations of the STATE PARK standing committee.

II. STANDING COMMITTEE MEMBERSHIP

The membership of the STATE PARK Greenway Fund Standing Committee as established by the relicensing settlements consists of a representative of the New York State Parks, Recreation and Historic Preservation (OPRHP) and a representative of the New York Power Authority (NYPA). Each member will designate a committee representative and an alternate and, to the extent practicable, each shall be authorized to act on behalf of their organization.

III. CHAIRPERSON, VICE CHAIRPERSON, AND SECRETARY

The Chairperson of the Parks Standing Committee shall be the designate of OPRHP and the Vice Chairperson shall be the designate of NYPA. The Chairperson shall conduct the meeting and serve as a spokesperson for the Standing Committee. In the absence of the Chairperson, the Vice Chairperson shall substitute for the current Chairperson. OPRHP shall provide a recording secretary to keep minutes and to maintain the standing committee’s records.

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IV. MEETINGS OF THE STANDING COMMITTEE

The STATE PARK standing committee will meet a minimum of four times a year on a schedule to be determined by the standing committee. The standing committee may convene additional meetings as necessary. Both members of the standing committee are required for a meeting to be official. Meetings of the committee will be open to the public and properly noticed on the Niagara relicensing website <http://niagara.nypa.gov/>. Notice of meetings will be provided directly to committee representatives and their alternates as well as to the Niagara River Greenway Commission (NRGC). The STATE PARK Standing Committees will notify the municipalities and the Indian nations within the entire Greenway Boundary. Draft minutes of standing committee meetings will be recorded and posted to the Niagara relicensing website within two weeks of the meeting date. Final minutes will be posted to the Niagara relicensing website within two weeks of adoption by the standing committee. Members of the standing committee unable to attend in person may attend and participate in the meeting by phone or other real-time method.

V. INFORMATION REQUIRED TO BE SUBMITTED TO THE CONSULTING PARTIES

Information supplied to Consulting Parties^[1] is expected to include, at a minimum: a.) a description of the project including any necessary maps and drawings as well as any past or subsequent phases; b.) a description of how the proposed project is consistent with the Niagara River Greenway Plan (NRGP)^[2] and; c.) a description of how the proposed project is consistent with other applicable legal requirements.

Project proponents shall submit to the Consulting Parties information as outlined in the above paragraph. The consultation period will officially end 90 days after the project proponent initiates consultation unless comments are received sooner.

VI. REQUIREMENTS FOR FUNDING PROPOSALS SUBMITTED TO THE STATE PARK STANDING COMMITTEE

Funding requests may be proposed by standing committee members or by individuals and organizations with an interest in the State Parks within the Greenway. The STATE PARK standing committee will require Greenway project funding requests to include written documentation of the following, as a minimum.

1. Evidence of consultation with: (a) the Niagara River Greenway Commission regarding a project’s consistency with the NRGP²; (b) the chief elected officer, or a designated representative, of any municipal, county and Indian nation affected by the proposed project; and (c) appropriate Local, State and Federal agencies^[3] (collectively, Consulting Parties as provided for in Article V). For purposes of this section, evidence of consultation will include: (a) a list of all materials submitted to the Consulting Parties by the project proponent; (b) copies of written comments provided by Consulting Parties to the project

proponent; and (c) documentation describing the manner in which the project proponent addressed^[4] the Consulting Parties' comments;

2. An operation and maintenance plan for the proposed project or an explanation as to why an operation and maintenance plan is not needed for the proposed project;
3. A description of the project's consistency with the NRGPs, including a discussion of the project's relationship to the principles, goals, and criteria established by the NRGPs²;
4. A description of the project's consistency with other State and Federal laws or regulations where applicable;
5. A description of the project proponent's efforts and/or opportunities to obtain matching funds;
6. A statement that the Greenway funds requested will not be used to defray: (1) any obligation existing as of August 31, 2007 or (2) operation and maintenance costs associated with any project existing as of August 31, 2007;
7. A description of current and proposed land ownership associated with the project; and
8. An overall project budget and cash flow summary including all phases for which relicensing greenway funds would be sought.

VII. SCHEDULE FOR PROPOSAL CONSIDERATION

The STATE PARK standing committee shall establish a schedule, annually, for submittal of funding applications by project proponents and the anticipated date to announce approved projects as well as the anticipated dates of standing committee meetings. This schedule will be posted on the Niagara relicensing website. The standing committee will review project proposals for funding at least once a year. To the extent possible, the schedule will take into account the grant application and award cycles of the other standing committees as well as other potential sources of matching funds.

VIII. AUTHORITY AND OBLIGATIONS OF THE STATE PARK STANDING COMMITTEE

The STATE PARK standing committee has sole responsibility for: (1) determining consistency with the NRGPs²; (2) selecting projects for funding; and (3) establishing funding levels for each project selected.

To be eligible for funding, a project must be consistent with the NRGPs² as determined on a consensus^[5] basis by a standing committee.

From the projects that have been determined eligible for funding, the standing committee will: (1) identify projects that will receive funding⁷; and (2) determine the appropriate level of funding for each selected project.

IX. GREENWAY PROJECT PAYMENT REQUESTS

Project payment requests to the New York Power Authority by the Office of Parks, Recreation and Historic Preservation (OPRHP) for costs associated with approved Greenway projects shall be submitted according to the following:

Qualifying costs shall include:

- (1) cost associated with the planning and development of approved projects;
- (2) personnel costs directly associated with planning, development, and implementation of approved projects;
- (3) costs associated with the construction and/or rehabilitation of the approved projects;
- (4) operation and maintenance costs on a case-by-case basis

Payment request shall have the following included:

- (1) Project Name
- (2) Contract #
- (3) Type of Contract (GC, HVAC, etc.)
- (4) Contractor Name
- (5) Low Bid Amount
- (6) Contingency (10%)
- (7) Total Request for Reimbursement

Payment by NYPA to OPRHP will be a distribution in advance of expenditure based upon the above documentation. OPRHP will also have the ability to request prefunding of personnel costs associated with planning, development and implementation of approved projects.

Greenway funds will not be released to defray: (1) any obligation existing as of August 31, 2007 or (2) operation and maintenance costs associated with any project existing as of August 31, 2007.

During the period in which an approved project is funded, the standing committees shall require each project sponsor to provide an annual report detailing the status of a project, including a summary of all fund expenditures.

X. PROTOCOL ADOPTION AND AMENDMENT

These protocols, as well as any future amendments, are adopted by consensus agreement of the members of the STATE PARK Standing Committee.

XI. NO THIRD-PARTY BENEFICIARIES

These protocols shall not create any right or interest in the public, or any member thereof, as a third-party beneficiary, and shall not authorize any non-Standing Committee member to maintain a suit at law or equity pursuant to these protocols. The duties, obligations, and responsibilities of the Standing Committee members shall remain as imposed under applicable law.

^[1] Consulting Parties are as defined in Article VI (1).

^[2] The NRGP is a multi-faceted document that includes an inventory of resources, implementation concepts and a Generic Environmental Impact Statement (GEIS). The information within the NRGP that has the most utility in evaluating projects are the "Principles, Goals, and Criteria" as articulated in Sections 3 and 4 of the NRGP. If the NRGP is terminated these protocols will be amended to reflect language in the various settlement agreements.

^[3] It is recognized that it may be difficult to identify the appropriate state and federal agencies for purposes of consultation. The standing committees will be flexible in administering this requirement and will provide guidance to the extent they can on state and federal agencies to be consulted.

^[4] In "addressing" comments from a consulted party, the project proponent should demonstrate that it has an understanding of the comments and should indicate whether the proponent agrees or disagrees with the comments and why. It is not required that the proponent agree with the consulted party. However, if the proponent has changed its proposal to accommodate a comment, this accommodation should be noted.

^[5] Consensus as used in this protocol shall mean that all members of the standing committee can live with the overall decision of the group.

^[6] It is incumbent upon the members of a standing committee who do not believe a project is consistent with the NRGP to articulate their reasons in writing and distribute this document to the full standing committee and the Project Proponent. The Project Proponent should be afforded the opportunity to amend its proposal prior to the second meeting of the standing committee to seek consensus.

^[7] The standing committees also must consider the engineering feasibility, operation and maintenance requirements, and cost effectiveness of proposed projects when deciding whether the project is to be funded.

^[8] If the individual standing committees choose to consolidate their process such that the consistency and funding questions are dealt with substantively in the same meeting(s) then they can choose to have only one 30 day period separating meetings to determine consensus on both subjects without being inconsistent with these protocols.