

**MINUTES OF THE SPECIAL MEETING  
OF THE  
POWER AUTHORITY OF THE STATE OF NEW YORK**

**February 9, 2005**

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Minutes of the Special Meeting of the Power Authority of the State of New York held at the White Plains Office at 8:50 a.m.

Present: Louis P. Ciminelli, Chairman  
Frank S. McCullough, Jr., Vice Chairman  
Timothy S. Carey, Trustee  
Joseph J. Seymour, Trustee  
Michael J. Townsend, Trustee

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Eugene W. Zeltmann	President and Chief Executive Officer
David E. Blabey	Executive Vice President, Secretary and General Counsel
Robert A. Hiney	Executive Vice President – Power Generation
Vincent C. Vesce	Executive Vice President – Corporate Services and Administration
Joseph Del Sindaco	Senior Vice President and Chief Financial Officer
Angelo S. Esposito	Senior Vice President – Energy Services and Technology
Edward Hubert	Senior Vice President – Transmission
Louise M. Morman	Senior Vice President – Marketing, Economic Development and Supply Planning
Brian Vattimo	Senior Vice President – Public and Governmental Affairs
Carmine J. Clemente	Deputy Secretary and Deputy General Counsel
Arthur T. Cambouris	Assistant General Counsel – Litigation
Joseph J. Carline	Assistant General Counsel – Power and Transmission
Arnold M. Bellis	Vice President – Controller
Donald A. Russak	Vice President – Finance
Thomas Warmath	Vice President and Chief Risk Officer
James H. Yates	Vice President – Major Accounts Marketing and Economic Development
Stephen P. Shoenholz	Deputy Vice President – Public Affairs
Michael E. Brady	Treasurer
Dennis T. Eccleston	Chief Information Officer
Angela D. Graves	Deputy Secretary
Frederick E. Chase	Executive Director – Hydro Relicensing
Jordan Brandeis	Director – Supply Planning, Pricing and Power Contracts
Paul F. Finnegan	Director – Upstate Public and Governmental Affairs
Lydia Helle Maide	Director – Major Accounts Group
Keith G. Silliman	Director – Niagara Relicensing
Daniel Wiese	Director – Corporate Security/Inspector General
Peter Scalici	Deputy Inspector General – Investigations
Albert Swansen	Deputy Inspector General – Security
Michael J. Huvane	Manager – Business Marketing and Economic Development
Edward Holman	Senior Environmental Engineer II
Michael A. Saltzman	Senior Information Specialist
Mary Jean Frank	Associate Secretary
Lorna M. Johnson	Assistant Secretary
Bonnie Fahey	Executive Administrative Assistant
Kevin J. Falvey	Consultant
Larry Stalika	Vice President – BOC Gases

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Chairman Ciminelli presided over the meeting. Executive Vice President, Secretary and General Counsel Blabey kept the Minutes.

1. **St. Regis Mohawk Land Claim Settlement – St. Lawrence/FDR Power Project**

The Executive Vice President, Secretary and General Counsel submitted the following report:

**SUMMARY**

“The Trustees are requested to acknowledge and ratify their earlier approval of a settlement agreement entitled Agreement of Settlement and Compromise to Resolve the Akwesasne Mohawk Title and Trespass Claims with Respect to Lands Situated in the State of New York, executed on February 1, 2005 (‘Settlement’). Attached hereto as Exhibit ‘1-A’

**BACKGROUND**

“In 1982 and again in 1989, three groups of Mohawks filed federal lawsuits against the Authority, the State, the Governor of the State, St. Lawrence and Franklin counties and others, claiming ownership to certain lands in St. Lawrence and Franklin counties and to Barnhart, Long Sault and Croil Islands. These islands are within the boundary of the Authority’s St. Lawrence/FDR Project (‘Project’). Settlement discussions were held periodically between 1992 and 1998. In 1998, the federal government intervened on behalf of the Mohawks.

“On May 30, 2001, the United States District Court (the ‘Court’) denied, with one minor exception, the defendants’ motion to dismiss the land claims. In April 2002, the tribal plaintiffs moved to strike certain affirmative defenses and, joined by the federal government, moved to dismiss certain defense counterclaims. In an opinion dated July 28, 2003, the Court left intact most of the Authority’s defenses and all of its counterclaims. Thereafter, the defendants filed amended answers and pretrial discovery began. Just last week the court-appointed magistrate agreed to stay the litigation and postpone discovery until March 31, 2005, in view of the Settlement described below.

“While the litigation was proceeding, the State and the Authority discussed settlement with the three tribal plaintiffs. Those settlement discussions have now produced a final land claim Settlement, which, as pertains to the Authority, contains terms that from time to time were the subject of Trustee briefings. The Settlement provides, among other things, for the Authority to: (a) convey Croil and Long Sault Islands and a 215acre parcel known as Massena Point to the Mohawks; (b) pay \$2 million annually to the Mohawks for the next 35 year; and (c) sell, at the preference power rate, up to 9 MW of Authority hydropower to the Mohawks for use on their reservation. In return, the Mohawks will release, under current law, all claims to Barnhart Island and any land in the State, relinquish any claim for any annual fees from the Project, dismiss their pending lawsuits and withdraw their pending challenges to the Authority’s new license for the Project.

“That Settlement, a copy of which is attached as Exhibit 1-A, was formally approved by votes of all three Mohawk entities. Thereafter, on February 1, 2005, the Settlement was signed by the Governor and authorized representatives of all three tribal entities. The Executive Vice President, Secretary and General Counsel signed the Settlement on behalf of the Authority, after receiving verbal authorization from each of the Trustees. The Settlement will require, among other things, federal and state legislation to become effective.

**DISCUSSION**

“As has been previously discussed in earlier briefings, this Settlement, when it becomes effective, will resolve a controversy which has lasted over 200 years and questioned the validity of the Authority’s title to the St. Lawrence/FDR Project.

“While the Authority is required to make annual payments, transfer three parcels of land (including two islands in the original claim area) and sell low-cost electricity to the Mohawks, its benefits substantially outweigh its costs. In fact, the components and value of the Authority’s Settlement obligations are not appreciably different than the value of terms offered (or to be offered) to affected communities in the course of settlements involving the Authority’s relicensing efforts. Similar to those cases, the Authority was likely to incur huge costs in terms of time, money and public relations if the disputes and, in this case, the litigation continued for what likely would be several

more years. That expense came with no assurance of success or even a result less costly than the settlement. At the end of the day, the risk that the Authority could lose control of the Project or forfeit a large portion of its annual revenues was much greater than the Settlement cost.

“On the other hand, the settlement yields a resolution with considerable benefits to the Authority. First, title to Barnhart Island and other Authority property throughout the State will no longer be the subject of a claim by any of the Mohawk entities, except in the event of a radical and unexpected change in the law. Second, those same entities will withdraw the only currently pending challenges to the Authority’s new license for the St. Lawrence/ FDR Project. Third, the Mohawks will expressly waive any claims under the Federal Power Act for large annual fees from the Authority’s Project revenues.

“In short, this settlement is in the best interests of the Authority and was properly approved and should be formally ratified.

FISCAL INFORMATION

“The annual payments made by the Authority to the Mohawks under this Settlement Agreement will be made from the Operating Fund.

RECOMMENDATION

“The Executive Vice President, Secretary and General Counsel recommends that the Trustees acknowledge and ratify their earlier verbal approval of the Agreement of Settlement and Compromise to Resolve the Akwesasne Mohawk Title and Trespass Claims with Respect to Lands Situated in the State of New York, executed on February 1, 2005.

“The President and Chief Executive Officer, the Executive Vice President – Power Generation and the Senior Vice President – Chief Financial Officer and I concur in the recommendation.”

*Mr. Cambouris presented the highlights of staff’s recommendations to the Trustees. In response to a question from Vice Chairman McCullough, Mr. Cambouris said that the State of New York, not the Authority, would indemnify the counties involved for any loss of taxes resulting from the settlement.*

The following resolution, as submitted by the Executive Vice President, Secretary and General Counsel, was unanimously adopted.

**RESOLVED, That the Trustees’ earlier verbal approval of the Settlement that is described in the foregoing report of the Executive Vice President, Secretary and General Counsel is hereby acknowledged and ratified; and be it further**

**RESOLVED, That the Trustees’ earlier verbal authorization of the Executive Vice President, Secretary and General Counsel to execute that Settlement on behalf of the Authority is hereby acknowledged and ratified.**

**AGREEMENT OF SETTLEMENT AND COMPROMISE TO RESOLVE THE  
AKWESASNE MOHAWK TITLE AND TRESPASS CLAIMS  
WITH RESPECT TO LANDS SITUATED IN THE STATE OF NEW YORK**

Subject to the authorization and ratification by an Act of Congress, this Agreement of Compromise and Settlement ("Agreement") is made this 1<sup>st</sup> day of February, 2005, between the Akwesasne Mohawks and the State of New York, *et al.*

**I. Understanding**

1. It is the understanding of the State of New York (the "State") and its political subdivisions, including, without limitation, the counties of St. Lawrence and Franklin ("Counties"), and the Power Authority of the State of New York ("Power Authority") (collectively referred to herein as the "State Parties"), and the tribal plaintiffs in Civil Action Nos. 82-CV-783, 82-CV-1114, and 89-CV-829 (the "Akwesasne Mohawks") (collectively, the "Parties") that it would be mutually beneficial to resolve all Akwesasne Mohawk land claims within New York State.
2. All references to state or federal law shall mean the laws as they exist and are interpreted by state or federal courts from time to time and shall include all future changes, amendments and revisions thereto unless otherwise stated.

**II. Scope of the Agreement:**

**A. Release**

Except as otherwise provided in this settlement agreement, the Akwesasne Mohawks hereby release and discharge the State, its political subdivisions, its citizens, inhabitants, the Power Authority and any successors in interest, of and from any claim which could be brought under federal or state law at the time of the execution of this settlement agreement to land or interest in land in New York State.

1. Nothing in this agreement shall alter or diminish any treaty, statutory, contractual or

aboriginal hunting, harvesting, fishing, trapping and/or gathering rights that the Akwesasne Mohawks may have; provided, however, that nothing in this settlement agreement shall be construed as recognizing the existence of, creating or conferring any such rights.

### **B. Monetary Settlement**

1. The State shall pay the sum of thirty million dollars, to be paid in five equal annual payments commencing January 1, 2008. Further, the Parties agree that the Power Authority shall pay the sum of two million dollars per year for thirty-five years commencing within ninety days of the effective date of this settlement agreement. The payments shall be exempt from federal or state taxation.

2. None of the payments, funds, assets or distributions set forth herein and none of the interest earned or income received on the same shall be subject to levy, execution, forfeiture, garnishment, lien, encumbrance, or seizure. None of the payments, funds, assets or distributions set forth herein and none of the interest earned or income received on the same shall at any time be used as a basis for denying or reducing funds to the Akwesasne Mohawks under any Federal, State or local program nor shall the same be deemed to be taxable, and such transfers shall not be deemed taxable events.

### **C. Land**

1. Upon the effective date of the settlement, the Akwesasne Mohawks may acquire the following lands by purchase of parcels from willing sellers at fair market value or by voluntary transfer:

- a. Land located in the Hogansburg-Bombay Triangle, as shown as "A" on the annexed map.
- b. Up to 1300 acres of land located in the area in the Town of Fort Covington marked as "B" on the annexed map. The Akwesasne Mohawks may acquire additional lands beyond the 1300 acres in area "B" either by purchase from willing sellers or by transfer from Akwesasne Mohawks or by voluntary transfer, provided, however, that before any such acquisition, the

Akwesasne Mohawks will obtain the prior written concurrence of both the County and Town in which such land is located, such concurrence which shall not be unreasonably withheld. When such land is acquired, it shall have the same status and be subject to administration by the Akwesasne Mohawks as set forth in C.5 of this settlement agreement.

c. Land located in the areas in the Town of Brasher marked as "C" on the annexed map, excepting the land on which the Power Authority transmission lines are located.

d. Land located in the area in the Town of Massena marked as "D" on the attached map, up to the Racquette River.

2. The Akwesasne Mohawks will be notified of all lands in the areas mentioned above which may come up for sale or auction as a result of a foreclosure by the State or County or other political subdivisions and shall be granted status as an "interested party" pursuant to section 1126 of the Real Property Tax Law of the State of New York.

Further, the Akwesasne Mohawks will be given a right of first refusal to purchase, at the appraisal value (as set forth in the most recent tax assessment), lands in the areas mentioned above that have passed to the state by escheat pursuant to the Abandoned Property Law of the State of New York.

3. In addition, the Power Authority shall convey Long Sault and Croil Islands above the normal average surface elevation, defined as elevation 241 feet (United States Lake Survey 1935), as depicted in the attached maps, to the Akwesasne Mohawks; provided, however, that prior to such conveyance those islands shall have been removed from the Federal Energy Regulatory Commission ("FERC") boundary of the Power Authority's St. Lawrence FDR Project ("Project"), which removal shall be provided for by the federal legislation ratifying this settlement agreement. The Akwesasne Mohawks shall grant to the Power Authority a flooding easement [the terms of which will be agreed to by the Power Authority and the Akwesasne

Mohawks and attached as an Exhibit to this settlement agreement] up to elevation 250 feet for potential high water levels. The Power Authority and the Akwesasne Mohawks shall identify mutually agreeable sites on Barrhart Island and/or within Project boundaries to locate boat launching and marina docking facilities for development by the Akwesasne Mohawks to facilitate access to Croil and Long Sault Islands. The Power Authority shall issue permits to the Akwesasne Mohawks for the construction and maintenance of such facilities upon receipt of any necessary approval by FERC and any other appropriate federal or state agency. The Akwesasne Mohawks agree that they will not use or develop the Islands in a manner that interferes with the operation of the St. Lawrence Seaway or the Project.

4. The Power Authority shall also convey to the Akwesasne Mohawks a 215-acre parcel on Massena Point as depicted in the attached map; provided, however, that prior to such conveyance such parcel shall have been removed from the FERC boundary of the Project, which removal shall be provided for by the federal legislation ratifying this settlement agreement. The Akwesasne Mohawks shall grant to the Power Authority a flooding easement [the terms of which will be agreed to by the Power Authority and the Akwesasne Mohawks and attached as an Exhibit to this settlement agreement] up to elevation 183 ft. for potential high water levels. The Power Authority shall maintain at its own expense and provide for the Akwesasne Mohawks access to Massena Point from the existing roads controlled by the Power Authority within the new Project boundary.

5. Except as otherwise provided herein, when such lands are purchased from willing sellers or conveyed by the Power Authority or by the county of St. Lawrence or Franklin to the Akwesasne Mohawks, or conveyed to the Akwesasne Mohawks by voluntary transfer, in accordance with the provisions of this Section C, they shall become Indian reservation land and be considered Indian country as a matter of federal law, will be subject to federal restrictions against alienation and will enjoy all of the rights and immunities, specifically including but not

limited to tax immunities, attributed to Indian Reservation lands and Indian country. Lands that are conveyed to or acquired by the Akwesasne Mohawks will be held and administered in the same manner as the current reservation lands, and according to an agreement to be negotiated among the Akwesasne Mohawks.

6. Lands acquired, whether individually or collectively, by the Akwesasne Mohawks outside of the areas described in the preceding paragraphs of this section shall be held in fee by the Akwesasne Mohawks unless acquired under Part 151 or other federal legal procedures.

7. The Office of Parks, Recreation and Historic Preservation shall waive any vehicle use fee for admission by any Akwesasne Mohawk to Robert Moses State Park.

8. The Akwesasne Mohawks will have the opportunity to bid for the purchase of lands on Barnhart Island (such as parks, surplus lands, etc.), if the State should decide to sell it.

9. The State agrees, within 60 days of the effective date of this settlement agreement, to use its best efforts to provide the Akwesasne Mohawks with a list of public and cultural facilities, including churches, cemeteries and parks (collectively "Cultural/Recreation Areas") that may become landlocked by lands which gain reservation status and/or are otherwise conveyed as a result of this settlement. The general public shall continue to have access to all such Cultural/Recreation Areas.

10. The State agrees, within 60 days of the effective date of this settlement agreement to use its best efforts to provide the Akwesasne Mohawks with an inventory listing of utility and highway easements and rights of way on the conveyed lands. The Parties agree that all valid utility, railroad and highway easements and rights of way shall continue to be valid and of full force and effect, provided that any rights to future payments or benefits to which the original grantor of the easement(s) or right(s) of way would otherwise be entitled to inures to the Akwesasne Mohawks, as successors to such grantors.

11. Akwesasne Mohawks shall continue to have access over publicly-owned land to public and cultural facilities located on publicly-owned lands off the reservation, such as churches and cemeteries and other spiritual and cultural sites that are on or landlocked by non-Reservation lands. Provided, however, that nothing in this agreement shall limit, abridge or alter the Akwesasne Mohawks ability to access such properties on private lands, pursuant to agreement with the landowner(s).

12. The Akwesasne Mohawks currently use standard building codes that are at least as stringent as those contained in the International Building Codes when constructing public facilities. The Akwesasne Mohawks agree to continue to utilize these standards, as amended from time to time.

13. The Akwesasne Mohawks may adopt and enforce environmental regulations on the Reservation at least as strict as those contained in federal law and regulations (which federal law and regulations shall continue to apply to the same extent as on any other land that is Indian country). If the Akwesasne Mohawks adopt and enforce on the Reservation more stringent environmental laws and regulations, then such more stringent regulations shall apply only on the Reservation and not to non-Reservation lands.

14. In making decisions as to the development and use of reservation land, the Akwesasne Mohawks shall give consideration to (i) the protection of established or planned residential areas from any use or development that would adversely affect residential living outside the Reservation, and (ii) protection of the health, safety and welfare of the communities contiguous to the Reservation. Prior to developing or otherwise altering the existing use of land within five hundred feet of the Reservation boundary, the Akwesasne Mohawks shall consult with local officials about the potential effect of such use on the adjacent community.

15. In making decisions as to the development and use of non-reservation land, local officials will give consideration to (i) the protection of established or planned residential areas from any

use or development that would adversely affect residential living within the Reservation, and (ii) protection of the health, safety and welfare of the Reservation community adjacent to the Reservation. Prior to developing or otherwise altering the existing use of land within five hundred [500] feet of the Reservation boundary, the local officials will consult with Mohawk officials about the potential effect of such use on the Reservation.

#### **D. Local Government Issues**

1. Land that gains reservation status as a result of this settlement shall be exempt from local real property taxes. All such land within the areas marked as "A", "B", "C", or "D" on the attached map shall remain subject to local real property taxes and other laws effective within the State until they are acquired by the Akwesasne Mohawks by purchase from a willing seller or by voluntary transfer to the Akwesasne Mohawks.

2. Beginning January 1, 2008, and for so long as prescribed by the state settlement legislation, the state shall annually pay the sum of two million dollars (which sum, as compounded, shall be increased by two percent each year, beginning with the second annual payment made hereunder) to the counties of St. Lawrence and Franklin to be distributed pursuant to an agreement reached between the state, the counties of St. Lawrence and Franklin and the towns therein that include lands that may be acquired by the Akwesasne Mohawks under this Agreement.

3. In the event that real property owned by the Akwesasne Mohawks, or part or individual member thereof, as of the effective date of this act has been removed from the real property tax rolls of either the county of St. Lawrence or Franklin, or otherwise resulted in unpaid real property taxes, then the State shall pay to such counties, in ten equal annual installments beginning January 1, 2008, such amounts as are necessary to reimburse the counties and the affected towns, villages and other taxing districts in such counties for the principal amount (as

verified by the state office of real property services) of any such unpaid real property taxes exclusive of any interest or penalties imposed thereon; provided, however, that, as soon as practicable and upon receipt of the first annual payment of monies to the counties, the local governments shall consent to the dismissal with prejudice of all foreclosure actions brought against lands owned by Akwesasne Mohawks for failure to pay real property tax and all taxes owed shall be forgiven, and further, if such foreclosure has occurred and title has passed to Franklin and/or St. Lawrence County, then the county or counties shall transfer to the Akwesasne Mohawks the title to any lands which have been transferred by a member or members to the Akwesasne Mohawks. Additionally, in the event that real property acquired as a result of this Agreement by the Akwesasne Mohawks shall be removed from the real property tax rolls of either the county of St. Lawrence or Franklin, then the State shall pay to the counties such amounts as are necessary to hold each of the counties of St. Lawrence and Franklin and their affected towns, villages and other taxing districts harmless against any losses in real property taxes (based upon the assessed value at the time of acquisition of such land by the Akwesasne Mohawks and the tax rate or rates applicable from time to time, as verified by the state office of real property services) resulting from such removal of such real property from the county tax base.

4. Local governments shall be eligible to receive all benefits provided by the United States to local governments impacted by Indian trust lands in other Indian land claim settlements, including but not limited to payments in lieu of real property taxes for parcels removed from the local tax rolls as a result of the settlement.

**E. New York Power Authority Issues**

1. The Power Authority shall make available within 90 days after the effective date of this settlement up to nine (9) megawatts (MW) of power and energy for sale to the power corporation established by the Akwesasne Mohawks which power will be resold for the sole

purpose of serving, without mark-up, the load of the Akwesasne Mohawks Reservation. This power shall be available to the Akwesasne Mohawks at the Power Authority's lowest rate for St. Lawrence-FDR Project power and energy (i.e., the rate charged to preference power customers). The Power Authority shall deliver and sell the power and associated energy to the Akwesasne Mohawks at the Delivery Point at the Project Switch-Yard. It shall be the Akwesasne Mohawks responsibility to arrange for the transmission and distribution, including all charges imposed by the New York Independent System Operator or any Successor. In order to ensure that this power and energy is made available to the Akwesasne Mohawks beyond the expiration of the current license for the Project, and is binding upon any and all future owners and operators of the Project, the Power Authority shall seek FERC approval of the power sales agreement with the Akwesasne Mohawks pursuant to Section 22 of the Federal Power Act.

2. Nothing in this settlement agreement shall affect or otherwise remove those Mohawk land owners or Mohawk-owned businesses currently on the Massena Electric grid, unless mutually agreed upon.

3. Upon the effective date of this settlement agreement the Akwesasne Mohawks shall: (a) withdraw with prejudice all pending, and refrain from initiating any new, rehearing or reconsideration requests, petitions for judicial review, or any other administrative or judicial challenge to FERC's October 23, 2003, order issuing the Power Authority a new license for the Project, or any subsequent orders on rehearing or reconsideration of that October 23, 2003 order; and (b) participate as a concurring party under Section 106 of the National Historic Preservation Act, with the Power Authority's efforts to develop an Historic Properties Management Plan under the Programmatic Agreement and the new license for the Project.

4. The Parties agree that the conveyance or acquisition of lands described in Section II of this settlement agreement does not entitle the Akwesasne Mohawks or their members to: (a) any interest or right to the license for said Project; (b) any annual charges or other payments relating

to ownership and operation of said Project or (c) any ownership, use, control or jurisdiction over the lands, waters, or operation of said Project.

5. In order to ensure that certain provisions of the Federal Power Act regarding federal reservations are not implicated at the Project, the Parties agree that the federal legislation ratifying this settlement agreement shall expressly: (a) direct FERC to permanently remove from the Project boundary all lands described in Section II of this settlement agreement; (b) direct FERC to remove Article 418 from the Project's license.

#### **F. Education**

Mohawks enrolled at Akwesasne who qualify for admission to any New York State institution of higher learning shall, upon their timely application for admission, be entitled to enroll in and attend such institution without payment of tuition or mandatory fees. The benefits provided to any Mohawk under this section shall not at any time affect the eligibility of the Akwesasne Mohawks or be used as a basis for denying or reducing funds to the Akwesasne Mohawks under any Federal, State, or local program. Benefits provided under this section may be used, where appropriate, as matching funds for Federal grants or loans.

#### **G. Settlement Legislation**

The land claim settlement described herein shall take effect upon the enactment of such federal and state legislation as is mutually acceptable to the Parties to effectuate the terms of this settlement agreement.

#### **H. Dispute Resolution**

In the event of any dispute, claim, question, or disagreement (collectively referred to hereafter as "claim") between the Akwesasne Mohawks and any of the State Parties, arising from or relating to this Settlement Agreement, or any of the terms therein, the Federal Settlement Legislation, or the State Settlement Legislation, the Akwesasne Mohawks and the State Parties shall use their best efforts to settle the claim. To this effect, any of the Akwesasne Mohawks or

any of the State Parties may provide written notice of a claim to the other and shall then meet within fourteen (14) days to negotiate in good faith and attempt to reach a just and equitable solution satisfactory to each party to the claim. If such a solution is not achieved within a period of thirty (30) days after such meeting, or the parties to the claim fail to meet and thirty (30) days pass after the written notice of a claim is received then, upon notice by the unsatisfied party to the other parties to the claim, the claim shall be finally settled by arbitration.

The notice shall specify with particularity the nature of the claim, the particular provision of this Settlement Agreement, or any of the terms therein; the Federal Settlement Legislation, or the State Settlement Legislation at issue and the proposed relief sought by the party demanding arbitration.

If the Akwesasne Mohawks and the State Parties so agree, a single arbitrator may be selected. In the event of a disagreement as to the arbitrator to be selected, each party to the claim shall select one arbitrator and the two arbitrators shall select the third. The arbitrator(s) shall be selected within (30) days of the notice of arbitration set forth above. Arbitration under this Section shall be conducted in accordance with the International Rules of the American Arbitration Association.

The cost of the arbitration shall be shared equally by the parties to the claim, but each party shall bear its own costs and attorneys' fees associated with its participation in the arbitration. All arbitration proceedings shall be conducted to expedite resolution of the claim and minimize cost to the participants.

Among other things, the federal legislation ratifying this settlement agreement shall provide for resolution of disputes between or among the Parties by arbitration, with arbitration decisions to be subject to enforcement and/or vacatur in the United States District Court in accordance with the Federal Arbitration Act, 9 U.S.C. §1, et seq. and provide for federal court jurisdiction over actions brought to enforce or review decisions issued in such arbitration proceedings. Any

Party may bring an action in the United States District Court of the Northern District of New York to compel arbitration under the arbitration provisions of this Settlement Agreement, to confirm, vacate, modify or correct a decision of the arbitrator in any arbitration provided for by this Settlement Agreement, or to enforce any judgment entered by the court with respect to any such arbitration, and the Parties each hereby expressly consent to the jurisdiction and venue in such court over such actions. Such actions in the District Court shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq. In the event the United States District Court issues a final determination that it lacks jurisdiction over any such action, then any Party may bring such action in the Supreme Court of the State of New York and any such action will be governed by the provisions of Article 75 of the New York CPLR.

The Parties agree to waive their respective sovereign immunity solely and exclusively for the strictly limited purpose of arbitration brought under the arbitration provisions of this Settlement Agreement and court actions with respect thereto and for no other purpose. It is further understood and agreed that the Akwesasne Mohawks specifically and expressly waive their tribal sovereign immunity from suit with respect to such arbitrations and court actions and the State specifically and expressly waives its sovereign immunity, including its 11th Amendment immunity, from suit with respect to such arbitrations and court actions. The Akwesasne Mohawks and State Parties shall also waive the defenses of exhaustion of administrative or tribal remedies with respect to any such arbitrations or court actions.

#### **I. Execution in Multiple Counterparts**

This Agreement may be executed and delivered in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. The Parties agree that an executed counterpart of this Agreement transmitted by facsimile shall be deemed an original. Any such counterpart signature pages may be attached to the body of this Agreement to form one complete integrated whole.

By signing this Agreement, the signatories represent that they are authorized to execute this Agreement on behalf of the Parties, respectively.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals.

St. Regis Mohawk Tribal Council

Sandra A. Regue Margaret Sumner James W. Ransom

Mohawk Council of Akwesasne

Angie Wabichaw Barnes

Mohawk Nation Council of Chiefs

Tohono Akwesasne Thompson

Governor of the State of New York

Gov. E. Pata

Power Authority of the State of New York

David C. Blawie

County of St. Lawrence

County of Franklin

2. **Motion to Conduct an Executive Session**

*“Mr. Chairman, I move that the Authority conduct an executive session to discuss: (i) the financial history of particular corporations and matters leading to the award of contracts to particular corporations and (ii) matters related to ongoing or potential administrative litigation relating to particular persons and corporations.”*

On motion duly made and seconded, an Executive Session was held.

3. **Motion to Resume Meeting in Open Session**

*“Mr. Chairman, I move to resume the meeting in Open Session.”* On motion duly made and seconded, the meeting resumed in open session.

**4. Southeastern New York Governmental Customers – Long-Term Supplemental Electricity Supply Agreements**

The President and Chief Executive Officer submitted the following report:

**SUMMARY**

“The Trustees are requested to authorize the execution of new long-term supplemental electricity supply agreements with governmental customers located in New York City as listed in Exhibit ‘4-A.’

**BACKGROUND**

“The Authority has served governmental customers in southeastern New York State since their transfer from the Consolidated Edison Company of New York, Inc. (‘Con Edison’) beginning in 1976 as part of the Authority’s purchase of the Indian Point 3 Nuclear and Charles Poletti Power (then the Astoria 6) Plants. A total of 115 governmental customers located in New York City and Westchester County purchase Authority electricity in order to serve a myriad of government facilities, including office buildings, the subway system, public schools, public housing, hospitals, water and wastewater treatment plants, parks, police and fire stations, bus depots and airports. In 2004, the governmental customer group accounted for about \$750 million in total revenue to the Authority, of which two-thirds was for electricity supply.

“Nearly 10 years ago, the Authority entered into long-term supplemental agreements with almost all of its governmental customers. The objective of these agreements was twofold – to provide price predictability and stability for the customers as well as a stable customer base and revenue stability for the Authority. A major feature of these agreements was that rates were frozen for nearly 10 years. However, due to electric industry restructuring and changes in the Authority’s supply portfolio to serve this customer group (e.g., the sale of Indian Point 3, the purchase of much larger quantities of electricity from the market and the construction of the new 500 MW combined cycle plant), the cost to serve these customers has increased and become more volatile. In addition, due to the scheduled retirement of the Poletti Power Plant as early as 2008, the Authority was faced with a need for in-city capacity to meet the needs of these customers.

“Because the agreements signed almost a decade ago did not accommodate these significant changes in costs and industry structure, the Authority gave the customers the requisite three-year notice of termination to be effective at the end of 2006, pending negotiation of suitable new agreements under which the Authority could recover these increased costs and customers would participate in securing new production resources to meet their needs.

**DISCUSSION**

“The attached form of agreement (Exhibit ‘4-B’) is a result of those discussions and reflects a proposed new, collaborative relationship between the governmental customers in New York City and the Authority.

“The principal features of the agreement are as follows:

- The governmental customers will purchase their electricity from the Authority through December 31, 2017, with the right to supply limited amounts of their load with renewable energy or distributed generation. In addition, customers can terminate service from the Authority at any time on three years’ notice, and under certain limited conditions on one year’s notice, provided that they compensate the Authority for any above-market costs associated with certain of the resources used to supply the customers.
- As noted at the Trustees’ meeting of December 14, 2004, the customers have agreed to new fixed rates for 2005 in contemplation of a new long-term agreement. For 2005, the Authority will collect an additional \$105 million from the customers instead of the \$133 million originally proposed in September 2004.

- Each year for the next annual rate year, the Authority will provide the customers a fully supported cost of service showing the fixed and variable costs necessary to serve the customers, which shall be subject to review and comment by the customers.
- Changes in the Authority's fixed costs will require formal rate cases. Variable costs such as fuel, purchased power and NYISO costs will be flowed through to the customers based on a consultative process among the parties and subject to the cost-recovery mechanism chosen by the customers, as discussed below.
- Beginning in 2005, and likewise each year thereafter, the Authority will implement an annual planning process during which the customers will select a cost-recovery mechanism for each succeeding rate year. The mechanisms offered will consist of a conventional full pass-through arrangement (i.e., an Energy Charge Adjustment Option or 'ECA Option'), an ECA with some additional risk management or 'hedging' by the Authority ('ECA with Hedging Option'), other risk-management options subject to a 'Sharing Plan' (defined below) and, to be offered beginning with the 2008 rate year, a 'Minimum Price Volatility Option' under which the Authority's production prices would be set for the rate year, subject to change only for cost increases relating to bond covenant and certain tax and similar enumerated external cost elements.
- For the cost-recovery mechanisms that the customers wish to consider during each annual process, the Authority will develop prices inclusive of all necessary and appropriate hedging costs. The Authority and the customers shall consult in the development of these mechanisms and the customers shall select a single such cost-recovery mechanism to be implemented from among those subject to the Sharing Plan, an ECA with Hedging Option or the ECA Option. The Minimum Price Volatility Option, however, shall not be subject to this consultative process.
- For any cost-recovery mechanism subject to the Sharing Plan, if actual costs in the rate year turn out to be different than were projected during the prior annual planning process, the first \$60 million of under-recoveries (losses) experienced in each rate year will be split evenly between the Authority and the customers. The customers' half of such under-recovery will thus be limited in the aggregate to \$30 million. This will be included as a surcharge spread out over the customers' bills in the succeeding rate year. Under-recoveries exceeding \$60 million in any rate year will be absorbed entirely by the Authority. The first \$10 million of all over-recoveries (savings) experienced over the life of the agreement in years during which the Sharing Plan applies will be credited to the customers. Any over-recoveries in excess of \$10 million experienced during years in which the Sharing Plan applies will be split evenly between the Authority and the customers, with appropriate mechanisms to credit the customers.
- The Authority will also develop a 'default' cost-recovery option to implement if the customers cannot agree on one of the cost-recovery options they requested the Authority to develop, which will also be subject to the Sharing Plan.
- The ECA Option, an ECA with Hedging Option and the Minimum Price Volatility Option are not subject to the Sharing Plan.
- The Authority agrees to use 'commercially reasonable' efforts to have the means in place to allow individual customers to select separate cost-recovery mechanisms by the 2008 rate year. Until such choice is available, all of the customers are subject to the mechanism they select collectively.
- The Authority agrees to complete cost-of-service studies of its production rates and its rates for the pass-through of Con Edison delivery charges by March 31, 2008, with appropriate tariff changes being proposed for adoption thereafter, subject to customer input and recognition of customer impacts.

- The Authority will provide the customers with updated cost-of-service information and actual-versus-budget variance reports on a quarterly basis, and will provide a report to the customers on key plant operational statistics each year.
- If a customer terminates the agreement, it will be subject to an exit fee that represents the customer's pro-rata share of RFP #3 resources (or any other resources that are added to the Authority's portfolio of production resources through a collaborative process similar to that used in RFP #3).
- The agreement also has provisions for incremental pricing for certain unexpected new load and waivers of exit fees for certain customer-arranged distributed generation and renewable resources projects.
- The Authority and the customers will continue to work in partnership to identify energy efficiency and clean energy technology projects at the customers' facilities and to implement such projects that the parties agree are economically feasible. The Authority commits to finance up to \$100 million of energy efficiency and clean energy technology programs each year over the term of the Agreement for the benefit of governmental customers in southeastern New York. The costs of such programs shall be borne by the customers in the same manner as under the current cost-recovery mechanisms for Authority energy efficiency projects.
- The customers are committed to pay for any supply secured for them by the Authority under RFP #3 and any subsequent RFP awarded in a similar collaborative method.
- Upon full termination of service under the Agreement, a customer can request continued service under terms and conditions consistent with the Authority's statutes. The original Application for Service would be terminated.
- As a special condition in the agreement with the City of New York ('City'), the Authority has agreed to operate two City-owned hydro facilities, subject to both satisfactory completion of a due-diligence investigation by the Authority and the Authority's recovery of costs from the City to operate these facilities.

"The agreement, substantially in the form attached as Exhibit '4-B,' has been approved by the Metropolitan Transportation Authority, and will be submitted for approval to the governing boards or responsible public official of the City, the New York City Housing Authority, the Port Authority of New York and New Jersey, the New York State Office of General Services and the Jacob K. Javits Convention Center. These customers account for nearly 90% of the revenues in the southeastern New York market. In addition, this agreement will also be offered to other governmental customers noted on Exhibit '4-A.'

#### FISCAL INFORMATION

"Once executed, these supplemental agreements will secure more than \$7 billion in production revenues to the Authority over the term of the agreements.

#### RECOMMENDATION

"The Director – Major Accounts, Governmental recommends that the Trustees authorize the execution of agreements, substantially in the form attached hereto as Exhibit '4-B,' with governmental customers in New York City.

"The Executive Vice President, Secretary and General Counsel, the Senior Vice President – Marketing, Economic Development and Supply Planning, the Senior Vice President and Chief Financial Officer, the Vice President – Major Account Marketing and Economic Development, the Director – Supply Planning, Pricing and Power Contracts and I concur in the recommendation.

*Ms. Maide presented the highlights of staff's recommendations to the Trustees. In response to a question from Trustee Seymour, Ms. Maide said that the Port Authority's Trustees still need to approve the new agreement. President Zeltmann complimented Ms. Morman and her staff, as well as the governmental customers, for their hard work on negotiating these agreements. Mr. Yates added that these new agreements represent a "sea change" in the Authority's relationships with its customers.*

The following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

**WHEREAS, the Authority's governmental customers desire rate predictability and stability and the Authority desires an assured customer base and revenue stability;**

**NOW, THEREFORE BE IT RESOLVED, That the Chairman, or his designee, is authorized to execute agreements between the governmental customers listed in Exhibit "4-A" and the Authority, in substantially the form attached hereto as Exhibit "4-B," with such amendments, deletions and supplements along with any other documents necessary to effectuate the foregoing, subject to approval of the form thereof by the Executive Vice President, Secretary and General Counsel; and be it further**

**RESOLVED, That the Chairman, the President and Chief Executive Officer and the Senior Vice President – Marketing, Economic Development and Supply Planning are, and each of them hereby is, authorized on behalf of the Authority to do any and all things and take any and all actions and issue, execute and deliver any and all tariffs, agreements, certificates and other documents to give effect to such agreements and to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President, Secretary and General Counsel.**

**List of New York City Governmental Customers**

Battery Park City Authority

Convention Center Operating Corporation (a/k/a Jacob K. Javits Convention Center of New York)

Empire State Development Corporation

Hudson River Park Trust

The Metropolitan Transportation Authority

New York City Housing Authority

City of New York

New York State Office of General Services

The Port Authority of New York & New Jersey

Roosevelt Island Operating Corporation

United Nations Development Corporation

5. **Next Meeting**

The next Regular Meeting of the Trustees will be held on **Wednesday, February 23, 2005, at 11:00 a.m., at the New York Office**, unless otherwise designated by the Chairman with the concurrence of the Trustees.

**Closing**

Upon motion duly made and seconded, the meeting was adjourned by the Chairman at approximately 9:55 a.m.

A handwritten signature in black ink on a light blue background. The signature reads "David E. Blabey" in a cursive script.

David E. Blabey  
Executive Vice President,  
Secretary and General Counsel