

## Compliance Agreement

This Compliance Agreement ("**Agreement**") is entered into as of the 4<sup>TH</sup> day of APRIL, 2016, between Londonderry Township, Dauphin County, Pennsylvania, a Pennsylvania township of the second class ("**Township**") and York Haven Power Company, LLC, a Delaware limited liability company ("**YHPC**"). Township and YHPC are each referred to as a "**Party**," and collectively as the "**Parties**."

### Background

- A. The Township is required under the provisions of the Pennsylvania Flood Plain Management Act to adopt and enforce a flood plain management ordinance consistent with the Federal Flood Insurance Program and rules administered by the Federal Emergency Management Agency ("**FEMA**") (the "**Flood Plain Management Regulations**").
- B. YHPC is the licensee, owner and operator of the York Haven Hydroelectric Project (the "**Project**") located on the lower Susquehanna River. The Project is operated pursuant to a Federal Power Act License No. 1888-030 issued by the Federal Energy Regulatory Commission ("**FERC**") (the "**FERC License**").
- C. The Project Boundary as defined in the FERC License encompasses the lands required to operate the Project, which includes inundated lands, shore lands and islands within the impounded water created by the York Haven dam, known as Lake Frederic. Within the Project area of Lake Frederic, YHPC currently holds title to all of Bashore Island and a majority of Shelley Island.
- D. YHPC and its predecessors have previously established approximately 300 recreational lots on Bashore and Shelley Islands (the "**Recreational Lots**"), which are available for use during the recreational season (Memorial Day through Labor Day) by individuals and families under year-to-year Recreational Lot Licenses.
- E. Under the terms of the YHPC's annual Recreational Lot License agreements, YHPC only provides a Recreational Lot License to the parties identified as holders of the Recreational Lot License ("**Lot License Holders**") to utilize the ground of the Recreational Lot; any structures or vehicles placed thereon are owned by and the responsibility of the Lot License Holders.
- F. The Recreational Lot Licenses and Rules and Regulations referenced therein require Lot License Holders to comply with all applicable federal, state and local laws and regulations, including flood plain management and sewage system regulations. The Recreational Lot Licenses provide YHPC with a right not to renew such Recreational Lot Licenses and to terminate any Recreational Lot License for failure to comply with Recreational Lot License terms and the Rules and Regulations. Upon termination of any Recreational Lot License, the Lot License Holder is obligated to remove any structures or materials and restore the Recreational Lot. YHPC holds a security deposit which may be forfeited upon a Lot License Holder's failure to fulfill such obligations.

- G. Articles 405 and 406 of the FERC License require YHPC to prepare and implement a recreation plan and a shoreline management plan for the Project, including the islands and shore areas owned by YHPC within the Susquehanna River.
- H. An audit conducted by FEMA determined that the Township was failing to properly administer and enforce its flood plain management regulations. The Township has been directed to undertake a concerted enforcement initiative against properties, in particular, those which over the past two decades have been constructed or improved, or undergone significant damages or significant improvements, without proper permits and adherence to flood plain standards. Failure by the Township to undertake such an enforcement program may result in FEMA suspending the Township from the National Flood Insurance Program (“NFIP”), which in turn would preclude any Township residents from flood insurance through the NFIP, renewing existing policies, obtaining mortgagees for structures in the floodplain from federally-insured banks, or from being eligible for most forms of disaster assistance.
- I. The Township has initiated an inspection and enforcement program with respect to compliance with Township and FEMA flood plain management standards.
- J. According to the Flood Insurance Rate Maps that are produced by FEMA and adopted by the Township, all of the island areas and near shore areas are located within the 100-year floodway of the Susquehanna River and that any structures located on recreational lots on islands within the Project Boundary that (i) were first constructed after March 1980 or after March 1980 sustained “substantial damages” (e.g., damages exceeding 50% of the structure’s value), (ii) underwent “substantial improvements” (e.g., improvements cumulatively costing greater than 50% of the structure’s value), or (iii) incurred repetitive loss (2 floods within 10 years involving greater than 25% damages), must be modified to meet all flood plain standards or removed.
- K. To be in compliance with the minimum requirements of the NFIP, the Township must enforce the Flood Plain Management Regulations. In order to do so, the only theoretically acceptable alternatives for structures on the recreational lots would be either (i) elevating such structures at least 1.5 feet above the calculated 100-year base flood elevation (~ 296-297 feet above mean sea level (“**AMSL**”) based on the NGVD29 datum); or (ii) replacing such structures with self-propelled or towable recreational vehicles (campers) that are capable of being removed from the islands expeditiously in the event of a flood, in addition to meeting other requirements of the Flood Plain Management Regulations.
- L. Elevating structures to 1.5 feet above the 100-year flood elevation would require raising structures by at least 7 to 13 feet above the current elevation of recreational lots on Bashore and Shelley Islands, and installing flood resistant reinforced concrete or steel piers and anchorage sufficient to withstand the lateral forces of flood flow and flood borne debris. Additionally, any development that occurs in the designated floodway must first prove that the development will not cause a rise in the level of the base flood elevation by providing an engineering analysis. Under the conditions of the recreational lots, such elevation and floodproofing is not feasible or economically realistic from an engineering and cost perspective.

Moreover, elevating such structures high above the island surface would impact the scenic characteristics of the Lake Frederic shoreline. Because access to the Islands is limited to a barge and single landing point on each Island, evacuation of recreational vehicles from a large number of recreational lots in the event of a flood is impractical and attempting such an evacuation during increasing river flows would present serious safety concerns.

- M. In addition to the constraints associated with the floodplain management requirements, the Township adopted an updated On Lot Sewage Disposal System Management Ordinance (“**OLSDS Ordinance**”) in December 2013, under which the Township is implementing a three-year phased inspection program of properties utilizing on-lot sewage disposal systems. A number of the recreational lots have non-potable water systems and are disposing of sewage via systems installed by lot license holders.
- N. Inspections of Recreational Lots were conducted by representatives of the Township in December 2015. The results of such inspections were reported in documents provided to YHPC on January 26, 2016. The Township’s inspections found that the vast majority of improvements and structures located on the Recreational Lots are not in compliance with the Flood Plain Management Regulations. Those inspections further indicated that many or most of the Recreational Lots contain some form of sewage disposal facility that does not comply with the OLSDS or state sewage facility standards.
- O. The Township and YHPC desire to cooperate in implementing a plan for eliminating the violations on the Recreational Lots on Bashore and Shelley Islands within YHPC’s control in an orderly manner over a reasonable period of time.

NOW THEREFORE, for and in consideration of the mutual promises, terms and understandings contained herein, and intending to be legally bound hereby, the Parties hereto agree as follows:

1. **Recitals.** The foregoing recitals are incorporated into this Agreement.
2. **Effective Date:** This Agreement shall become effective upon the date that this Agreement has been approved and executed by the Township and YHPC. Such date shall be the “**Effective Date.**”
3. **Cooperation.** The Township and YHPC agree to cooperate in implementing the compliance plan set forth in this Agreement.
4. **Near Term Actions.** Consistent with the commitment made in its Final License Application to FERC and the requirements set forth in Article 406 of the FERC License, YHPC will terminate and not reissue Recreational Lot Licenses for any recreational lot where (1) the existing structures are abandoned or (2) existing structures have been damaged and have not been replaced by structures conforming to all applicable federal, state and local regulations, including the Flood Plain Management Regulations and the OLSDS Ordinance. YHPC may also terminate and not renew any 2015 licenses where the lot owners have failed to provide the full financial security deposit required under the License agreement.

5. **Recreational Lot License Phase-Out.** Within ten (10) days after the Effective Date, YHPC shall issue a notice to all Recreational Lot License holders advising that effective at the end of the 2017 Recreation Season (September 30, 2017), all Recreational Lot Licenses will be terminated. Subsequent to such notice, the following actions shall be implemented:
- (a) Pursuant to the terms of the Recreational Lot Licenses, YHPC will require the License Holders to remove their personal property, demolish and remove any structures, and restore their respective Recreational Lots to their original unimproved and unoccupied condition, remove all related trash and waste, and meet the other Surrender Conditions defined in the Recreational Lot License by the Removal Date defined in the notice issued by YHPC. The Removal Date will be 45 days after the end of the 2017 Recreational Season (*i.e.*, November 14, 2017); provided that if water conditions cause access to the Island to be restricted, YHPC will extend Removal Date to allow for access to the Island after navigation aids are re-installed and access is available.
  - (b) If a License Holder fails to comply with the Surrender Conditions set forth in the Recreational Lot License by the Removal Date, YHPC and the Township shall cooperate in exercising YHPC's rights under the Recreational Lot Licenses and in implementing demolition and removal of the related structures and materials from the Islands:
    - (i) To the maximum extent possible, YHPC will utilize the Security Deposit provided by the respective License Holders for paying the Surrender Expenses as defined in the Recreational Lot License.
    - (ii) The Township will seek grant funds to assist in converting the Recreational Lot area to alternative public recreational uses (see below). If and to the extent available, the Township will utilize grant funds obtained for such purposes to assist in defraying the expenses of removing structures from the Recreational Lots, restoring the impacted areas, and preparing such areas for alternative public recreational uses.
    - (iii) If the funds available from Security Deposits and from grant funds are insufficient to cover the expense of removing structures from the Recreational Lots and restoring the impacted areas, YHPC will fund such work and seek to recover such costs from the Recreational Lot License holders pursuant to the provisions of the Recreational Lot License.
    - (iv) Within 90 days following the Removal Date referenced in Section 5(a) or within 90 days after River flow conditions allow YHPC with safe access to the islands to conduct inspections (which ever is later), YHPC shall prepare and submit to the Township for review and approval a plan and schedule for the organized removal of those structures and materials on Recreational Lots that were not removed by the License Holders in compliance with the Surrender Conditions (the "**Removal Plan**"). Following approval of the Removal Plan by the Township,

YHPC shall in good faith implement the plan, with the objective of completing removal of such structures and materials by October 31, 2019. It is understood that implementation of the Removal Plan may require either one or two construction seasons depending upon a number of variables, including River flow conditions, island soil and road conditions, the amount of structures and materials remaining on the Recreational Lots, the ability and capacity of vessels to transport equipment and materials to and from the islands, the availability of contractors with appropriate equipment, and any permitting or legal proceedings.

- (c) So long as YHPC in good faith implements the actions set forth in this Section 5, the Township agrees not to initiate enforcement action against YHPC with respect to conditions on the Recreational Lots.
6. **Township Pursuit of Grant Funds.** The Township will apply for grant funds and other financial assistance to implement removal of structures from the Islands, restoration of the impacted areas, and development of public recreation facilities. YHPC will support and cooperate with the Township in relation to such efforts.
7. **Long Term Recreation.** Subject to the receipt of necessary funding, YHPC and the Township agree to cooperate as follows:
- (a) YHPC and the Township will in good faith and in consultation with FERC investigate the feasibility of arrangements under which the Township or another governmental entity would undertake to develop, manage and maintain alternative recreational facilities on Bashore and Shelley Islands. Alternative arrangements to be considered include: (1) a long-term, nominal rent lease of the Islands by YHPC to the Township or another governmental entity; (2) donation of a recreation facility easement to the Township or another governmental entity; and (3) a dedication of all or part of the Islands to the Township or another governmental entity. It is acknowledged and understood that any lease, easement or dedication would be subject to FERC approval and a reservation by YHPC of rights (e.g., the right to review and approve plans for recreation facility improvements and to monitor activities on the Islands) to the extent required by the FERC License in order to assure use of the lands consistent with the requirements of the FERC License. YHPC and the Township will consider such alternative structures in relation to (i) legal authority; (ii) consistency with FERC requirements; (iii) liability considerations; and (iv) tax considerations.
  - (b) If the Township and YHPC mutually conclude that an arrangement under which the Township would undertake to develop, manage and maintain alternative public recreational facilities on Bashore and Shelley Islands is feasible, cost-effective, and desirable, the Township and YHPC will cooperate in (i) preparing a recreation plan for development of appropriate facilities, such as landing and mooring areas, picnic areas, walking and hiking paths, low impact camping areas, which plan would be subject to

submission to FERC for review and approval; (ii) seeking funds to implement such plan; and (iii) implementing such arrangement and plan.

8. **Notices:** All notices, demands, requests or other communications required by this Agreement (collectively "Notices") shall be in writing and given as follows by: (i) personal delivery; (ii) established overnight commercial courier with delivery charged prepaid or duly charged; or (iii) certified mail, return receipt requested, postage prepaid. All Notices shall be addressed to the applicable addresses set forth below, or to any other address or addressee as a party entitled to receive Notices shall designate, from time to time, by Notice given to the other party in the manner provided in this Section.

**FOR YHPC:**

York Haven Power Company, LLC  
P.O. Box 67, 1 Hydro Park Drive  
York Haven, PA 17370  
Attention: General Manager

With a copy to:

York Haven Power Company, LLC  
President  
5425 Wisconsin Avenue, Suite 600  
Chevy Chase, MD 20815

**FOR TOWNSHIP:**

Londonderry Township  
783 South Geyers Church Road  
Middletown, PA 17057  
Attention: Steve Letavic, Township Manager

With a copy to:

Eckert, Seamans, Cherin & Mellott, LLC  
213 Market Street, 8th Floor  
Harrisburg, PA 17101  
Attention: James A. Diamond, Esq.

9. **Governing Law.** This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

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10. **Counterparts.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have signed and sealed this Agreement on the date first written above.

YORK HAVEN POWER COMPANY, LLC

By: Juan A. Kimble  
Name: Juan Kimble  
Title: President

LONDONDERRY TOWNSHIP

Attest:

[Signature]  
Secretary

By: Ronald Kopp  
Name:  
[Chair] [Vice-Chair], Board of Supervisors