

NPC BACKGROUNDER MAID OF THE MIST LEASE AGREEMENT

History

Organized ferry service between Ontario and the State of New York has been offered between both countries since 1846.

The Maid of the Mist Steamboat Company (MOM) has been in operation since 1884.

Beginning in 1898, MOM and NPC entered into formal landing rights agreements allowing MOM to pick up tourists on the Canadian side of the border in return for a fee paid to NPC.

Since 1971, negotiated lease payments by MOM have been based on a percentage of revenues generated by MOM's operation on NPC land.

In 1971, MOM had a capacity of 300 passengers per hour on the Canadian side of its operations.

Today, capacity at the Canadian operations of MOM is 2,400 passengers per hour and is served by a highly efficient, high speed elevator system, which is owned and operated by NPC.

The Commission has also developed and operates highly successful retail and food and beverage venues at the MOM landing that are themed on this iconic attraction.

Current Negotiations

The current lease between NPC and MOM is set to expire in November, 2009. This is a unique lease, given that the business relationship between the parties has existed for over 100 years. The magnitude of the investment and the composition of the operations, being Canadian and American, were also factors that were considered when discussions on a lease agreement took place.

In 2004, the owners of the MOM advised NPC that they wished to renew their existing lease. This is in keeping with past practice. The 20-year lease signed in 1971 was renegotiated in 1982 for a period of 25 years, and again in 1989, for a period of 21 years. In each case, the percentage of revenues NPC received from MOM's operations increased.

After a series of discussions between MOM and NPC staff, the Commission was advised in December, 2006 that a status report seeking their direction was imminent.

In February 2007, the Commission received a staff report setting out 13 issues within the lease which required their input and opinion. The Commission gave guidelines for negotiations on these issues and directed staff to report back.

In March 2008, the first of two reports was submitted to the Commission. The first report addressed the 13 areas and outlined a number of new features for consideration. The Commission then sought further clarification and requested a follow-up report to address these matters.

In April 2008, by a majority vote, the Commission approved the second report and authorized the Chairman to seek the required Order-in-Council approval from the Provincial Cabinet and, together with the General Manager, execute the agreement.

A request for an Order-in-Council was made to the Ministry of Tourism by letter dated July 17, 2008.

Features of the Lease Agreement

If approved by the Provincial Government, the 25-year lease between NPC and MOM will include a number of changes. Among them:

- **Boat Admission Fees** – Fee increases below 10 per cent can be made without NPC approval but require written notification by May 1 of the year preceding the increase for groups and no later than December 1 for fully independent travelers. Fare increases above 10 per cent require Commission approval.
- **Rental Rates** – The existing flat rate paid to NPC on MOM revenues generated on the Canadian side has been replaced with a sliding scale rate starting at a higher level and declining incrementally as new revenue targets are achieved. This is designed to protect NPC revenue streams during years in which visitation is down and provides incentives to MOM to perform at levels that exceed previous historic highs.
- **Inflation Protection** – The base amounts upon which the rental rate is applied is tied to 2009 fares. Increases in fares will automatically result in an increase in the base amount. Therefore, an increase in MOM fares results in an increase in NPC revenues. Historically, fares have been increased every two to three years.
- **Elevator Fees** – NPC may establish a fee for the use of the elevator at its sole discretion. Elevator fees are merged with the MOM fare so the transaction is seamless for the customer. NPC retains the full amount of the elevator fee.
- **Opportunities to Review Fees** – The new agreement may be re-opened in year 10 and every five years thereafter to allow for the renegotiation of the rental rates. If agreement on new rates cannot be reached, it may be submitted to arbitration with the proviso that the rental rate may not be lowered.
- **Termination** – In addition to termination for breach of contract, the lease may be terminated at the end of the 25-year term with no obligation to extend or provide compensation of any kind.
- **First Right of Refusal** – NPC has the first right of refusal with respect to the sale of MOM and further has the right to refuse to consent to any sale to another buyer.

Government Reviews

On July 31, 2008, a former NPC Commissioner filed a disclosure of potential wrongdoing against the Chairman of NPC, with the Office of the Integrity Commissioner.

In March 2009, the Integrity Commissioner accepted the Government's response to the Disclosure of Wrongdoing filed in relation to The Niagara Parks Commission, which concluded "that in respect of the specific allegations made, the Chair acted in good faith and in accordance with policies and procedures in place at the NPC." The Integrity Commissioner's Report also found that "no wrongdoing occurred in this case."

As part of her ruling, the Integrity Commissioner made two recommendations:

1. The first called on the provincial government to conduct two reviews – a performance and procurement audit, and a review of NPC governance. These reviews were completed by the Province in September, 2009.
2. The second recommendation called on the NPC Board to examine its original decision surrounding the Maid of the Mist lease agreement. The Minister asked NPC in a letter dated August 28, 2009, to review their decision in the context of the findings of the governance and audit reviews. The decision rendered by the Commission on September 25, 2009 completes this request.