

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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.

RULING ON MOTIONS TO STRIKE AND TO NOTICE

(Issued August 31, 2012)

KEVIN J. CASUTTO and
MICHELLE L. PHILLIPS, Administrative Law Judges:

This ruling addresses the August 23rd Champlain Hudson Power Express, Inc., and CHPE Properties, Inc. (Applicants) motion to strike portions of the Initial Briefs filed by Central Hudson Gas & Electric Corporation (Central Hudson), Independent Power Producers of New York (IPPNY) and Entergy Nuclear Marketing, LLC and Entergy Nuclear Fitzpatrick, LLC (Entergy); the August 24th IPPNY motion to incorporate or notice IPPNY comments; and the Applicants' August 28th countermotion to incorporate or notice prior Commission or Siting Board cases and pages of the IPPNY membership directory. A Joint Response to Applicants' August 23rd motion was filed by Entergy and IPPNY on August 29, 2012. Responses to IPPNY's August 24th motion were filed by Entergy, in support, and the Applicants, in opposition.¹ We will not reiterate or summarize the contents of these submissions, as they are available in their entirety on the Commission's web site.

We have read and considered all the filings. We agree that Applicants' August 23rd motion is based on a distorted reading of our June 7th ruling. The June 7th ruling was not intended to preclude parties from citing to extra-record

¹ Applicants' opposition included the above-referenced countermotion.

materials to support their legal and/or policy arguments, if such citation is otherwise permissible and appropriate. Thus, for example, citing to Applicants' public web page or to a public web page concerning the New York Energy Highway Request for Information may be appropriate if the citation is offered in support of a party's arguments concerning relevant and/or material legal or policy issues. At this point in this proceeding, if a party has cited to extra-record materials that another party believes to be irrelevant, immaterial, or improper, such arguments should be presented in the reply briefs. Moreover, parties need not seek a ruling to cite to Commission or Siting Board orders (or filings in those proceedings) in closing briefs.

Applicants' motion to strike is denied. Furthermore, we decline to incorporate or take official notice at this late stage of the proceedings of the IPPNY membership directory excerpt that Applicants offered.

Lastly, in seeking to respond to arguments presented in Applicants' initial closing brief, IPPNY has requested that we incorporate or take official notice of two RFI comment letters. The RFI letters are offered as evidence directly contradicting Applicants' argument that IPPNY has not made "any effort to seek new laws or regulations directly prohibiting discriminatory procurement processes..." We decline to incorporate or take official notice of the RFI letters because the argument over IPPNY's alleged actions or inactions in this regard is not relevant to the PSL Article VII issues that are before the Commission.

(SIGNED)

MICHELLE L. PHILLIPS

(SIGNED)

KEVIN J. CASUTTO