

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

Case 10-T-0139

**MOTION OF INDEPENDENT POWER PRODUCERS OF
NEW YORK, INC. TO INCORPORATE BY REFERENCE OR
TAKE OFFICIAL NOTICE OF IPPNY COMMENTS**

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I. INTRODUCTION AND BACKGROUND

Pursuant to Rules 3.6 and 85-2.7 of the New York Public Service Commission's ("Commission") Rules of Procedure and sections 306(2) and 306(4) of the New York State Administrative Procedure Act ("SAPA"),¹ Independent Power Producers of New York, Inc. ("IPPNY") moves to incorporate by reference or to take official notice of the following documents that are attached hereto: 1) the joint comments of IPPNY and the Natural Resources Defense Council ("NRDC") filed in Case 02-E-1656 on March 7, 2003 ("the March 2003 Comments"); 2) IPPNY's letter to Governor Andrew M. Cuomo, dated February 9, 2012 (the "February 2012 Letter"); and 3) IPPNY's letter to the Energy Highway Task Force ("Task Force"), dated May 30, 2012 ("May 2012 Letter")(collectively, the "IPPNY Comments").

The March 2003 Comments were filed in response to the Commission's consideration of Consolidated Edison Company of New York, Inc.'s request for recovery of costs it would incur under a contract it executed pursuant to its request for proposals ("RFP") for 500 MW of new capacity in New York City. In the March 2003 Comments, IPPNY and NRDC demonstrated

¹ 16 N.Y.C.R.R. § 3.6 (2012); 16 N.Y.C.R.R. § 85-2.7 (2012).

that discriminatory RFPs undermine competitive markets. IPPNY and NRDC requested that the Commission initiate a proceeding to evaluate this concern and develop guidelines to be used by load serving entities as they structured future RFPs for new capacity.

The February 2012 Letter addressed the Governor's 2012 State of the State address concerning New York's energy infrastructure and, specifically, a new "Energy Highway." IPPNY urged that if the State issues an RFP to secure any additional energy resources, "such RFP must be narrowly tailored, carefully structured, transparent and non-discriminatory." IPPNY further stated "[a]ny such RFP must be open to both existing and new resources on a level playing field."²

The May 2012 Letter was filed in response to the Task Force's April 11, 2012 Request for Information. The May 2012 Letter similarly urged the Task Force that any RFP it issues should be non-discriminatory.

In the initial post hearing brief of Champlain Hudson Power Express, Inc. ("CHPE") and CHPE Properties, Inc. (collectively, the "Applicants"), at page 15, Applicants asserted that IPPNY's opposition to the Applicants' Article VII application is anticompetitive. In support of their claim, Applicants argued that IPPNY has not made "any effort to seek new laws or regulations directly prohibiting discriminatory procurement processes" The IPPNY Comments are evidence directly contradicting Applicants' argument. As the IPPNY Comments are relevant and public documents, IPPNY requests that Your Honors incorporate them into the record or take official notice of them.

²February Letter at 2.

II. THE COMMISSION SHOULD INCORPORATE BY REFERENCE OR TAKE OFFICIAL NOTICE OF THE IPPNY COMMENTS

Rule 85-2.7 provides that "[a]ny party or staff counsel may move to incorporate by reference information contained in any filing with this commission, or contained in any other public document." SAPA § 306(4) provides that "[o]fficial notice may be taken of all facts of which judicial notice could be taken and of all facts within the specialized knowledge of the agency."

Good cause exists to incorporate by reference or take official notice of the IPPNY Comments. The IPPNY Comments were filed with the Commission, the Governor and the Task Force and are, therefore, public documents. They are directly relevant to the issue of Applicants' contention that IPPNY's opposition to the Article VII application is anticompetitive. The IPPNY Comments contradict Applicants' assertion that IPPNY has not sought new law or regulations directly prohibiting discriminatory procurement processes.

III. CONCLUSION

For the above reasons, the Commission should incorporate by reference or to take official notice of the IPPNY Comments. In light of the impending due date for reply briefs, IPPNY requests that the time for responses to this motion be shortened to August 30, 2012.

Respectfully submitted,

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