

New York State Department of Environmental Conservation

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Joe Martens
Commissioner

February 1, 2013

Jeffrey C. Cohen
Acting Secretary to the Commission
New York State Public Service Commission
Agency Building 3
Albany, NY 12223-1350

Re: Case 10-T-0139, Champlain Hudson Power Express, NYSDEC Letter in Lieu of Brief in Opposition to Exceptions to the Recommended Decision

Dear Acting Secretary Cohen,

The New York State Department of Environmental Conservation (NYSDEC) submits this letter in lieu of brief in response to Entergy Nuclear Power Marketing, LLC and Entergy Nuclear Fitzpatrick, LLC's (Entergy) Brief on Exceptions dated January 17, 2013. As a statutory party to this proceeding, NYSDEC staff believes that the proposed Facility route, Certificate Conditions and full record of this proceeding, represent the minimum adverse environmental impact as required pursuant to Public Service Law Section 126, as set forth in the Recommended Decision issued December 27, 2013.

In its Brief on Exceptions dated January 17, 2013, Entergy reiterates its previous claims that the record is insufficient to support a finding of minimization of adverse environmental impact to sturgeon habitat.¹ NYSDEC respectfully disagrees with Entergy's position as contrary to the record in this proceeding. The record², developed in collaboration with State resource agencies, as well as other interested signatory parties over the course of this proceeding, is more than adequate to support a finding pursuant to PSL §126.1, providing that the Commission consider the nature of the probable environmental impact of the facility, whether the facility represents the minimum adverse environmental impact considering the alternatives, and whether the facility will conform to applicable state laws and regulations, including, in this instance, the State Endangered Species Act. The state of available technology and environmental impact avoidance and mitigation measures incorporated into Facility design, construction and operation all factor into the Commission's consideration of the above for the purpose of making its §126.1 Findings. The full record clearly provides sufficient information for the Commission to complete its deliberation and nothing that Entergy argues requires an adverse finding.

Section 126.1 makes abundantly clear that the Commission retains the authority to determine issues of State law, including issues pertaining to endangered species, and to verify the sufficiency of the Certificate Conditions and full record in this proceeding. Entergy's pointing to

¹ See Entergy's Brief on Exceptions, pages 24-27.

² See Joint Proposal pages 25-27, 61-63; Certificate Conditions 156 and 165; Hearing Exhibits 92, 102, 121 and 127.

decision making that may occur pursuant to federal law, namely the Federal Endangered Species Act (16 USC §1531 *et seq.*), does not implicate the decision making responsibilities of the Commission. To reiterate the above, NYSDEC respectfully points to the Commission's own authority as the appropriate regulatory vehicle for determining whether the Facility as proposed will comport with State law, given the sufficient record at hand and the Recommended Decision's consideration thereof.

Please feel free to contact me with any questions that you may have.

Respectfully submitted,

Patricia J. Desnoyers, Esq.
Patricia J. Desnoyers, Esq.

CC: All parties