

**BEFORE THE
PUBLIC SERVICE COMMISSION
STATE OF NEW YORK**

Application of Champlain Hudson Power)	
Express, Inc. and CHPE Properties, Inc. for)	
a Certificate of Environmental Compatibility)	
and Public Need Pursuant to Article VII of)	Case No. 10-T-0139
the Public Service Law for the Construction,)	
Operation and Maintenance of a High-)	
Voltage Direct Current Circuit from the)	
Canadian Border to New York City.)	

**RESPONSE OF CHAMPLAIN HUDSON POWER EXPRESS, INC.
AND CHPE PROPERTIES, INC. TO REQUEST OF INDEPENDENT POWER
PRODUCERS OF NEW YORK, INC. FOR INCORPORATION BY REFERENCE OR
OFFICIAL NOTICE AND COUNTERMOTION FOR OFFICIAL NOTICE AND
INCORPORATION BY REFERENCE OF ADDITIONAL MATERIALS**

Champlain Hudson Power Express, Inc. (“CHPEI”) and CHPE Properties, Inc. (CHPE Properties,” and, collectively with CHPEI, the “Applicants”) submit this Response to the Request of the Independent Power Producers of New York, Inc. (“IPPNY”) for Incorporation by Reference or Official Notice (the “IPPNY Motion”) and Countermotion for Official Notice and Incorporation by Reference (Applicants “Response and Countermotion”) pursuant to sections 3.5 and 3.6 of the Commission’s Rules, 16 N.Y.C.R.R. §§ 3.5 and 3.6 (2012).

INTRODUCTION AND BACKGROUND

In its Motion, IPPNY seeks incorporation by reference or official notice of three documents prepared by IPPNY, one of which was submitted to the Commission in May of 2003 and the other two of which were submitted to Governor Andrew M. Cuomo this year. Your

Honors should reject this request for several reasons. First, all parties have had a full and fair opportunity to develop a full and complete record at the hearing in this case. Second, IPPNY has failed to provide any justification for its belated attempt to supplement the record long after the completion of the hearing in this case. Finally, allowing IPPNY to supplement the record long after the hearing has closed would be unfair to Applicants and other parties supporting the Joint Proposal (the “JP”) in this case, who have not been provided the same opportunity.

In the event that Your Honors nevertheless decide to allow IPPNY to supplement the record as it proposes, then Your Honors must then also incorporate by reference or take official notice of the additional facts concerning IPPNY’s conduct set out below. Without this additional information, the information submitted by IPPNY creates a one-sided and distorted impression of IPPNY’s actions.

ANALYSIS

I. THE COMMISSION SHOULD REJECT IPPNY’S MOTION

In the Ruling on Motion issued in this proceeding on June 7, 2012, Your Honors ruled that the purpose of the post-hearing briefs in this proceeding was to present the facts in the record and that references to materials outside the record would not be permitted:

We remind the parties that argument in briefs should marshal the record evidence in this proceeding. Briefing citations to evidentiary material outside the record would be improper and will not be considered.¹

IPPNY’s Motion seeks to circumvent the requirements of this ruling through the simple guise of incorporating into the record materials that would otherwise be improper for it to cite in its briefs. IPPNY provides no justification for its failure to include these materials in its voluminous evidence in this proceeding. Moreover, allowing IPPNY alone to introduce evidence with

¹ Ruling on Motion, slip op. at 5 (June 7, 2012).

respect to its own actions would be patently unfair to Applicants and other parties supporting the JP, as it would result in a record that unfairly presented only the facts that IPPNY wished to bring forth with respect to its actions. Accordingly, Your Honors should reject IPPNY's Motion.

II. IF YOUR HONORS INCORPORATE OR TAKE OFFICIAL NOTICE OF THE DOCUMENTS PROVIDED BY IPPNY, YOUR HONORS MUST ALSO INCORPORATE OR TAKE OFFICIAL NOTICE OF THE ADDITIONAL FACTS SET OUT BELOW

In the event that Your Honors grant IPPNY's Motion, then Applicants respectfully request that Your Honors also incorporate by reference or take official notice of the following additional actions and inactions by IPPNY. This evidence is required to provide Your Honors and the Commission with the full context in which to evaluate IPPNY's actions in this proceeding.

In the case of information available from the Department of Public Service's Document Matter and Management ("DMM"), Applicants propose that Your Honors take official notice in order to avoid the need to incorporate voluminous materials already in the Commission's files into the record in this case. For two documents prepared by IPPNY that do not appear to have been posted on DMM, Applicants are seeking incorporation by reference.

A. Information From DMM For Official Notice

The following facts are all clear from the face of the orders of the Commission and the Siting Board and pleadings publicly available on DMM and are therefore appropriate for official notice.

1. TransGas Energy Systems By orders dated April 18 and July 15, 2008 in Case 01-F-1276, the New York State Board on Generation Siting and the Environment (the "Siting Board") acted on the application of TransGas Energy Systems, LLC ("TransGas") to construct a new 1,000 MW combined-cycle gas turbine generating facility in New York City.

TransGas was represented in that proceeding by Read & Laniado, the firm representing IPPNY in this case. On May 12, 2006, IPPNY filed comments with the Siting Board in support of the TransGas application. At no time during the pendency of Siting Board Case 01-F-1276 did IPPNY either oppose the construction of that new 1,000 MW generating facility in New York City or urge the Siting Board to limit the ability of TransGas or its customers to enter into contracts for the sale of electricity produced in that facility.

2. **Bayonne Energy Center** By order dated November 12, 2009 in Case 08-T-1245, the Commission granted a Certificate of Environmental Compatibility and Public Need to Bayonne Energy Center, LLC (“Bayonne”) for the construction of a 6.6 mile 345 kV AC transmission line that would permit Bayonne to deliver 512 MW of electricity to Con Edison’s Gowanus Substation in Brooklyn, New York. By order dated September 17, 2010 in Case 10-E-0276, the Commission granted lightened regulation to Bayonne. Bayonne is a joint venture of ArcLight Capital Partners, LLC and Hess Corporation. At no time during the pendency before the Commission of either Case 08-T-1245 or Case 10-E-0276 did IPPNY either oppose the construction of that new 512 MW transmission line supplying New York City or urge the Commission to limit the ability of Bayonne or its customers to enter into contracts for the sale of electricity produced in that facility.

3. **NRG’s Berrians Gas Turbines** By order dated January 24, 2011, in Case 10-E-0197, the Commission issued a Certificate of Public Convenience and Necessity and lightened regulation to NRG Astoria Power LLC (“NRG”) for the construction of its proposed 1,040 MW electric generating facility at Astoria, Queens, New York (the “Berrians Gas Turbine Projects”). At no time during the pendency before the Commission of Case 10-E-0197 did IPPNY either oppose the construction of that new 1,040 MW generating facility or urge the

Commission to limit the ability of NRG or its customers to enter into contracts for the sale of electricity produced from that facility.

4. **South Pier Improvement Project** By order dated December 23, 2009, in Case 09-E-0250, the Commission granted a Certificate of Public Convenience and Necessity and lightened regulation to Astoria Generating Company, L.P. (“AGC”) for the construction of its 100 MW South Pier Improvement Project to be located on the Gowanus Bay at 29th Street in Sunset Park, Brooklyn New York. At no time during the pendency before the Commission of Case 09-E-0250 did IPPNY either oppose the construction of that new 100 MW generating facility in New York City or urge the Commission to limit the ability of AGC or its customers to enter into contracts for the sale of electricity produced from that facility.

5. **Astoria Repowering** By order dated June 25, 2003 in Case 00-F-1522, the Siting Board granted a Certificate of Environmental Compatibility and Public Need to AGC for the construction of a 1,816 MW Astoria Repowering facility at Astoria, Queens, New York. At no time during the pendency before the Siting Board of Case 00-F-1522 did IPPNY either oppose the construction of that new 1,816 MW generating facility in New York City or urge the Siting Board to limit the ability of AGC or its customers to enter into contracts for the sale of electricity produced from that Facility.

6. **GenOn Bowline** On July 16, 2012, GenOn Bowline, L.L.C. (“GenOn”) filed a petition to amend the Certificate of Environmental Compatibility and Public Need issued by the Siting Board in Case 99-F-1164 that would permit GenOn to move forward with long dormant plans to build a new 750 MW combined-cycle gas turbine generating plant at the Bowline site in the Town of Haverstraw, Rockland County New York. At no time during the pendency before the Siting Board of Case 99-F-1164 has IPPNY either opposed the construction

of that new 750 MW generating facility in the Lower Hudson Valley or urged the Siting Board to limit the ability of AGC or its customers to enter into contracts for the sale of electricity produced from that Facility.

7. **Astoria Energy I and II** By order dated January 27, 2005 in Case 99-F-1191, the Siting Board approved an amendment to the Certificate of Environmental Compatibility and Public need previously awarded to Astoria Energy, LLC (“Astoria Energy”) for the construction of a 1,000 MW generating facility at Astoria, Queens, New York. By orders dated March 26, 2004 in Case 04-E-0058 and December 15, 2008 in Case 08-E-1111, the Commission granted lightened regulation to Astoria Energy and Astoria Energy II LLC (“Astoria Energy II”), respectively. At no time during the pendency of Case 99-F-1191 before the Siting Board or during the pendency of Cases 04-E-0058 and 08-E-1111 before the Commission did IPPNY either oppose the construction of that 1,000 MW new generating facility in New York City or urge the Commission to limit the ability of Astoria Energy, Astoria Energy II, or their customers to enter into contracts for the sale of electricity produced from that Facility.

B. IPPNY Documents for Incorporation By Reference

Applicants respectfully request that the Your Honors incorporate into the record by reference pages 11 and 28 of the 2012 Membership Directory of the Independent Power Producers of New York, Inc., copies of which are attached to this Response and Counter-motion as Attachment A.² In addition, Applicants also request that Your Honors incorporate into the record a three page memorandum from Chris LaRoe of IPPNY to Randy Watt of the New York Independent System Operator, Inc. dated April 30, 2012 titled “IPPNY Comments on NYISO

² This directory is available in its entirety at the following public web address: <http://lb.ec2.nextbook.com/nxtbooks/naylor/IPPR0012/index.php?startid=28#/0>

Reliability Resource Compensation Proposal,” a copy of which is attached to this Response and Counter-motion as Attachment B.³ These documents are appropriate for incorporation into the record in this proceeding by reference because they contain statements by a party opposed to Applicants that relate to the issue of the positions taken by IPPNY in this and other similar cases.

CONCLUSION

WHEREFORE, for the above-stated reasons, Champlain Hudson Power Express, Inc. and CHPE Properties, Inc. respectfully request that Your Honors reject IPPNY’s Motion for Incorporation by Reference or Official Notice. In the event that Your Honors decide that IPPNY should be permitted to supplement the record as it proposes, then fundamental fairness requires that Your Honors also take official notice of and incorporate by reference the additional materials concerning the positions taken by IPPNY provided in this Response and Counter-motion and the attachments thereto.

Respectfully submitted,

/s/ George M. Pond

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Dated: August 28, 2012

³ This document was obtained from the NYISO’s web site but is only available to market participants with the credentials required to access the secure portions of that website.

ATTACHMENT A

Mission Statement

Independent Power Producers of New York, Inc.

It is the Mission of the Independent Power Producers of New York, Inc., (IPPNY) to assist its member companies in becoming the premier providers of electricity in New York State.

In furtherance of its Mission, IPPNY is committed to the following policies:

- Advocating fair and efficient competition among wholesale and retail suppliers of electricity and other potentially competitive electric resources, including renewable, fossil-fueled, nuclear, demand response providers and conservation technologies.
- Advocating for fair government oversight to foster new generation, fair business practices and environmental stewardship to further enhance the reliability of supply and competition of independent power throughout the state and the region.
- Ensuring that existing and future contractual and regulatory agreements and commitments are fully honored.
- Promoting and maintaining open, nondiscriminatory access to utility transmission and distribution systems for all market participants at rates that fairly reflect the actual cost of providing such access.
- Obtaining input from and building consensus among all private and public sector interests involved in the development of competitive electric markets, as well as those that supply goods or services to such markets.
- Assisting members' efforts to respond fully to the needs of customers.
- Demonstrating and communicating that independent power facilities are reliable, cost-effective and environmentally sound.

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IPPNY Generator Members

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Company Description

Hess Corporation is a leading global independent energy company, engaged in the exploration and production of crude oil and natural gas, as well as in refining and marketing refined petroleum products, natural gas, and electricity. Our vision is to maximize shareholder value by enhancing financial performance and providing long-term profitable growth. We are committed to meeting the highest standards of corporate citizenship by protecting the health and safety of our employees, safeguarding the environment and creating a long-lasting, positive impact on the communities in which we do business.

Exploration and production are the engines of future income and growth, currently representing nearly 80% of capital employed and more than 95% of annual capital expenditures. The company has operations in the United States, United Kingdom, Norway, Denmark, Russia, Equatorial Guinea, Algeria, Libya, Gabon, Egypt, Ghana, the Joint Development Area of Malaysia and Thailand, Indonesia, Thailand, Azerbaijan, Australia, Brazil and St. Lucia. We continue to increase reserves outside the mature regions of the United States and North Sea.

Our marketing and refining objective is to maximize financial returns from existing assets. The Company operates about 1,360 Hess branded sites in 16 states along the East Coast of the United States. We continue to selectively expand our Hess Express convenience store network. The HOVENSA refinery in the United States Virgin Islands, a joint venture between a subsidiary of Hess Corporation and a subsidiary of Petroleos de Venezuela, S.A. (PDVSA), is one of the largest crude oil refineries in the world. Refined petroleum products, as well as natural gas and electricity, are marketed to customers throughout the East Coast of the United States. This integrated approach to marketing allows the Company to meet the total energy needs of our customer base while maintaining a low-cost operating base. We have a strong leadership team and a global organization, implementing a focused strategy that is positioning Hess Corporation for long-term financial performance.

Summary of NY Presence

Hess has a significant marketing presence in all three major energy commodities: fuel oil, natural gas and electricity. Hess is a leading supplier of energy products to commercial and industrial markets along the East Coast, providing 'one-stop shopping' to customers with reliable supply, as well as flexibility to adjust to today's fast moving fuel markets.

At PSEG Power NY, we make things work for the environment.

PSEG Power New York's Bethlehem Energy Center, one of the cleanest power plants in NY, is part of PSEG Power's generating fleet totaling more than 13,000 MW of electric generating capacity. *PSEG Power is a subsidiary of PSEG, a diversified energy company (www.pseg.com).*



PSEG

Power New York LLC

ATTACHMENT B



INDEPENDENT POWER PRODUCERS OF NEW YORK, INC

Independent Power Producers of New York, Inc.

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www.ippny.org

Christopher@ippny.org

To: Randy Wyatt

From: Chris LaRoe

Date: 4/30/12

Re: IPPNY Comments on NYISO Reliability Resource Compensation Proposal

As requested during the joint ESPWG, MIWG, and ICAPWG meeting held on April 16, 2012, IPPNY submits the following comments on the NYISO's latest "Reliability Resource Compensation" proposal. IPPNY would begin by referring the NYISO to the countless requests made by its members during meetings on this subject as well as IPPNY's past submissions, including e.g., the comments IPPNY provided on the previous NYISO proposal (submitted on 1/4). Throughout this process, IPPNY and its individual members repeatedly have raised concerns with the NYISO's numerous proposals failing to reflect a generator's right to file for, and receive, cost-of-service rates in proceedings before the Federal Energy Regulatory Commission (FERC). That same concern continues to apply to the NYISO's latest proposal. While the latest proposal provides for a reliability study prior to the potential submission of a retirement notice – an element of the proposal that IPPNY supports albeit a right that generators already have today – the proposal only references negotiation of a "compensation mechanism" with the Department of Public Service (DPS) and/or the relevant Transmission Owner (TO). It wholly fails to recognize that a generator needed for reliability retains its right under FPA Section 205 to seek cost-based rates at FERC.

While generators currently have this right, other market participants have indicated that they disagree and would oppose a generator that attempts to utilize this right. IPPNY made this point clear to the NYISO during stakeholder discussions and at the annual sector meetings. At those sector meetings, senior NYISO staff confirmed that it is the NYISO's opinion that generators do have such a right and that it would be reflected in future NYISO proposals. Notwithstanding that assurance, however, the NYISO's latest proposal still did not include this core principle. Unless and until that right is clearly reflected, IPPNY cannot and will not support this or any other NYISO proposal.

With the expectation that the NYISO will follow through on its commitment to reflect a generator's right to file FPA Section 205 cost of service rate filings in future proposals (which could be incorporated into Slide 6 of the latest proposal, e.g.), IPPNY offers the

following comments on other aspects of the current proposal in the interest of reaching a resolution on this issue within the stakeholder process.

- Slide 4:
 - DPS staff should only be involved in the study at the request of the generator. A transmission owner should only be involved in the study to the degree that a potential local reliability issue may be involved. In that event, the NYISO should confirm that the TO representatives that are involved do not have any market function.
 - The NYISO should define deadlines to complete these studies. The lack of a defined deadline is a shortcoming in the current process which should be rectified through this initiative.
 - At no point during the study process should a generator be compelled to provide cost information to either DPS staff or the TO. In the event that a generator submits a retirement notice and enters into negotiation with DPS staff for compensation, the generator may elect to provide cost information at that time.

- Slide 6:
 - IPPNY supports the commitment made at the April 16 meeting for NYISO and DPS staff to provide more information concerning the process that the PSC would follow to negotiate compensation with a generator that is determined is needed for reliability.
 - IPPNY supports the premise identified by the NYISO during the meeting that, at a minimum, no component of the NYISO's proposal modifies the Attachment H capacity market bidding requirements of either Pivotal Suppliers or new entrants -
 - i.e. the Pivotal Supplier would continue to be permitted to bid at the higher of the UCAP Offer Reference Level or its Going Forward Costs and the new entrant would continue to be required to bid at the Offer Floor unless exempt -- and requests that the NYISO clarify its proposal to that effect consistent with the NYISO's statements during the April 16th joint meeting. In addition, to ensure that any other otherwise uneconomic unit that is needed for reliability and is given a contract sends the correct market signal, the NYISO should specify that the capacity of such unit must be removed from the capacity market auctions to prevent the unit from artificially suppressing the market clearing prices.

- Slide 7:
 - Nothing within the NYISO's proposal (or IPPNY's proposal) would alter the PSC's ability to select either a gap solution or a reliability solution (either a regulated backstop solution or an alternative regulated solution) as defined in the NYISO's tariffs. However, IPPNY maintains its position that it is FERC that will define the appropriate rate for that solution if it a generation resource.
 - If a compensation arrangement is reached under this newly proposed process, IPPNY does not have an opinion on the cost allocation methodology that must be applied for the reliability services being provided by the generator.

- Again, during the period of negotiations and/or if an agreement is not reached, the generator has the right to file under FPA Section 205 to obtain cost-based rates from FERC.