

**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

**SUPPLEMENTAL REPLY BRIEF
OF THE CITY OF NEW YORK**

October 19, 2012

**COUCH WHITE, LLP
540 BROADWAY
P.O. BOX 22222
ALBANY, NEW YORK 12201-2222
(518) 426-4600**

ARGUMENT

The City of New York (“City”) hereby submits its Supplemental Reply Brief pursuant to the *Ruling on Motion to Incorporate or Notice* (“Ruling”) granting a request to incorporate the Final 2012 Reliability Needs Assessment (“RNA”) of the New York Independent System Operator, Inc. (“NYISO”) into the evidentiary record in this proceeding.¹

The 2012 RNA concluded that additional capacity would be needed downstate starting in 2020 to address an identified reliability need. (2012 RNA at 7.) This finding: (a) is consistent with the testimony of Applicants’ witness Julia Frayer that updating the 2010 RNA to reflect current market conditions would reveal a downstate reliability need,² and (b) contradicts the testimony of Independent Power Producers of New York, Inc. (“IPPNY”) witness Mark Younger that the Facility should not receive a Certificate of Environmental Compatibility and Public Need (“Certificate”) because, *inter alia*, the 2010 RNA found no reliability need for new resources. (*See, e.g.*, Applicants’ Supp. Br.; Joint Motion at 2-3.)³

In its Supplemental Initial Brief, IPPNY downplayed the 2012 RNA findings, arguing that the NYISO’s Comprehensive System Planning Process (“CSPP”) may determine that the identified need has been moderated or eliminated and, therefore, that the 2012 RNA does not necessarily provide a basis of need for the Facility.⁴ IPPNY argued, for instance, that notices of

¹ *See* Case 10-T-0139, Article VII Application of Champlain Hudson Power Express, Inc., Joint Motion (filed October 2, 2012) and Ruling (October 10, 2012). The City is filing this Supplemental Reply Brief pursuant to the terms of the October 10, 2012 Ruling on Motion to Incorporate or Notice.

² *See generally* Case 10-T-0139, *supra*, Applicants’ Supplemental Initial Brief (dated October 16, 2012).

³ As used herein, the term “Facility” refers to the high-voltage direct current transmission system, the converter station, and the Astoria-Rainey Cable and appurtenant facilities that Applicants proposed to construct. *See, e.g.*, Case 10-T-0139, *supra*, Joint Proposal (filed February 24, 2012).

⁴ *See generally* Case 10-T-0139, *supra*, IPPNY Supplemental Initial Brief (filed Oct. 5, 2012).

intent to mothball may be rescinded, or an uneconomic facility may execute some form of subsidized contract to sustain commercial operations. (IPPNY Supp. Br., pp. 3, 6.)

This argument is without foundation. While it is true that market prices are uncertain, there is no record basis for concluding that decisions to mothball will be reversed. By way of example, IPPNY stated that the owner of the Gowanus Barge 1 and 4 units in New York City submitted, then rescinded, a notice of intent to mothball those units. (IPPNY Supp. Br., pp. 4-5.) IPPNY asserted that the continued operation of these units may be sufficient to eliminate the downstate reliability need identified by the 2012 RNA. (*Id.*) Those units, however, presumably were slated for mothballing because they are uneconomic under existing market conditions. The evidentiary record is devoid of data demonstrating that future market prices will be sufficient for the Gowanus units to sustain commercial operations and avoid being mothballed, or that the 2012 RNA's reliability need determination otherwise may be erased during the CSPP.

Central Hudson Gas & Electric Corporation ("CHGE") argued that (i) the NYISO does not consider project economics when selecting market-based responses to an identified reliability need, and (ii) the fact that such need has been identified cannot support a finding under Public Service Law ("PSL") § 126(1)(d) that the Facility conforms to a long-range plan for the electric system and would serve the interests of electric system economy and reliability.⁵ This argument is inapt. The provision cited by CHGE is one of many findings that Article VII requires the Commission to make before issuing a Certificate. Pursuant to PSL § 126(1)(a), the Commission also must "find and determine ... the basis of the need for the facility." The reliability need identified by the 2012 RNA provides one such basis.

However, as noted in the City's prior briefs in this proceeding, the RNA is not solely determinative of the "need" issue. For example, the New York State Public Service Commission

⁵ See generally Case 10-T-0139, CHGE Supplemental Initial Brief (filed October 16, 2012).

(“PSC”) has concluded that merchant transmission lines serve the public interest and are needed to provide “system reliability benefits, economic benefits for customers and New York State, and achievement of public policy goals including environmental benefits.”⁶ The evidentiary record here demonstrates that the merchant transmission line proposed by Applicants would address needs substantially similar to those that the PSC relied upon when issuing a Certificate for the facilities in prior proceedings.⁷

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Albany, New York

Respectfully submitted,

/s/ Michael Delaney

Michael Delaney, Esq.
Director, Regulatory Affairs
Office of Energy Policy, City of New York
253 Broadway
New York, New York 10007
(212) 676-0756

/s/ Jay Goodman

S. Jay Goodman, Esq.
Robert M. Loughney, Esq.
Couch White, LLP
Attorneys for the City of New York
540 Broadway, P.O. Box 22222
Albany, New York 12201-2222
(212) 788-1579

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⁶ Case 08-T-0034, Article VII Application of Hudson Transmission Partners, LLC., Order Granting Certificate of Environmental Compatibility and Public Need (issued September 15, 2010) at 42 (hereinafter, “HTP Order”) (citing Case 08-T-1245, Bayonne Energy Center, LLC, Order Adopting the Terms of a Joint Proposal and Granting Certificate of Environmental Compatibility and Public Need, with Conditions, and Clean Water Act § 401 Water Quality Certifications [issued November 12, 2009] at 13 [hereinafter, “Bayonne Order”]).

⁷ See, e.g., Case 10-T-0139, *supra*, Initial Post-Hearing Brief of the City of New York (filed Aug. 22, 2012) at 4-14.