

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.

***STAFF'S
REPLY TO EXCEPTIONS***

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STAFF'S BRIEF OPPOSING EXCEPTIONS

A. INTRODUCTION AND GENERAL CONSIDERATIONS

This brief opposing exceptions is submitted by the Staff of the Department of Public Service ("Staff")¹ in support of the recommended decision ("RD") issued on December 27, 2012 by Administrative Law Judges ("ALJs") Phillips and Casutto. In the RD, Administrative Law Judges ("ALJs") Phillips and Casutto recommend that the Commission: adopt all of the essential terms of Joint Proposal dated February 24, 2012 ("Joint Proposal")² and grant a Certificate of Environmental Compatibility and Public Need ("Certificate") pursuant to Article VII of the Public Service Law (PSL) and that the Department issue a Water Quality Certification for the Facility. It is clear from the RD that the ALJs carefully considered the record and weighed the

¹ Staff is designated to represent the public interest in this proceeding

² The Joint Proposal provides for the installation, operation and maintenance of two solid dielectric high voltage direct current ("HVDC") electric cables extending from the international border to a converter station in Astoria, Queens (the "HVDC Transmission System"), a voltage converter station that will convert HVDC to high voltage alternating current ("HVAC") in Astoria, Queens ("Converter Station"), two HVAC circuits from the Converter Station to the New York Power Authority's 345 kV gas insulated switchgear ("GIS") substation located north of 20th Avenue and 29th Street in Astoria, and a 345 kV HVAC cable circuit from the New York Power Authority ("NYPA") substation to Consolidated Edison Company of New York, Inc.'s (Con Edison) Rainey Substation ("Astoria-Rainey Cable", collectively, the "Facility").

evidence in this proceeding including: the Joint Proposal with appendices, 219 hearing exhibits,³ initial and reply statements supporting or opposing the Joint Proposal, extensive testimony (both pre-filed and that elicited at the evidentiary hearing), and initial and reply post-hearing briefs.

This brief opposing exceptions is also submitted in response to briefs on exception filed on January 17, 2013 by Central Hudson Gas & Electric Corporation (Central Hudson); the Independent Power Producers of New York, Inc. (IPPNY); the Business Council of the State of New York; Entergy Nuclear Power Marketing, LLC and Entergy Nuclear Fitzpatrick, LLC. (Entergy); and Local 97, International Brotherhood of Electrical Workers, (collectively "Opposing Parties") which were all filed on January 17, 2013. In their briefs on exceptions, the Opposing Parties argue against the grant of a Certificate to the Applicants pursuant to Article VII of the Public Service Law ("PSL"). However, many of the ALJs' recommendations regarding the Joint Proposal remain unchallenged, including: the facility's route and configuration, probable environmental impacts, and conformance with state and local laws; the vast majority of Certificate Conditions; the guidelines and practices regarding preparation, content and filing of the Environmental Management and Construction Plan; and the timing and content of the Water Quality Certification.⁴ The arguments that the Opposing Parties do make in their briefs on exception are not supported by the record or the law and should be dismissed.

Staff continues to recommend that the Commission grant the Applicant a Certificate to construct, operate and maintain the Facility. As recognized in the RD, the facts established by the evidence - the vast majority of which are undisputed -

³ The hearing exhibits include, among other exhibits, the 125 exhibits submitted along with the JP.

⁴ The Water Quality Certification was issued on January 18, 2013.

overwhelmingly support the findings and determinations required to be made by the Commission in rendering its decision on the record pursuant to Public Service Law (PSL) §126(1) to grant a Certificate to authorize the construction, operation and maintenance of the Facility. So as not to be unduly repetitious, Staff will presume familiarity with our initial and reply statements and brief in support of the Joint Proposal and reply brief (filed on March 16, 2012, March 30, 2012 and August 22, 2012, September 7, 2012 respectively) and will only address those points raised by the Opposing Parties in their briefs on exceptions.

B. THE RECORD SUPPORTS A FINDING THAT THE FACILITY WILL PROVIDE ECONOMIC BENEFITS SUFFICIENT TO BE CONSIDERED AMONG THE OTHER RELEVANT FACTORS CONSIDERED BY THE COMMISSION IN DETERMINING A NEED FOR THE FACILITY.

In its brief on exception, IPPNY asserts that the ALJs erred in concluding that the Facility will provide economic benefits, and therefore, the Commission should not consider economic benefits in weighing factors relevant to its finding of the basis of need for the facility pursuant to PSL §126(1). Specifically, IPPNY argues that the RD erroneously credited Staff's economic analyses of the Facility over that put forth by IPPNY's witness Mark Younger (IPPNY BE at 5-22). As explained in the testimonies of Staff Witnesses Paynter, Gjonaj and Wheat and in Staff's Brief and Reply Brief, and as the RD correctly concludes, Staff's economic analyses more accurately comports with the nature of the facility and the factors relevant to the Commission's determination than that proffered by Mr. Younger. Moreover, Mr. Younger's analysis contains errors that require dismissing its conclusions.

1. Staff's economic analysis of the Facility properly considers the economic benefits relevant to the Commission's determination of need.

IPPNY claims that Staff's production cost savings analysis only measures the amount of money saved by the project

developer and not to society as a whole, and is therefore irrelevant to the Commission's determination of need. IPPNY's arguments misrepresent the analysis. Moreover, the record clearly supports favorable Commission consideration and adoption of the Staff's analysis and its results which demonstrate that the Facility is expected to produce significant net economic benefits from a societal perspective.

The Facility is expected to deliver electricity produced by wind and hydroelectric generation in Canada, displacing other, typically gas-fired, generation in and around CNY. Therefore, as explained in paragraphs 23 and 107-118 of the Joint Proposal, Staff's production cost savings analysis compared the cost of 1,000 MW of Canadian hydroelectric power delivered to CNY via the Facility to the cost of building and operating 1,000 MW of combined cycle gas-fired turbine ("CCGT") generation of similar capacity located in CNY. As Staff explained in our initial brief (pp. 12-14), this comparison represents the long-run economic benefit of the Project to society as a whole, since absent the Project and associated imports, the most likely alternative resource would be a CCGT of similar capacity in CNY; the difference in costs is thus, by definition, the net economic benefit. By comparing total economic costs of the Facility with those of the the most likely alternative, while ignoring transfer payments (due to price impacts), this in fact measures (economic) benefits to society, rather than ratepayer benefits or profits to one party as erroneously claimed by IPPNY.

2. The assumptions underlying Staff's economic analysis are supported by the record.

IPPNY argues that the ALJs, in favoring Staff's economic analysis over that of Mr. Younger, failed to address the allegedly flawed assumptions contained in Staff's analysis. The argument ignores the fact that Mr. Younger's allegations were addressed and refuted in the record. The trade

association's argument rests entirely on the testimony of its witness, Mark A Younger; however, Mr. Younger's testimony was thoroughly rebutted by Staff witness Paynter. The errors identified in Staff's rebuttal, along with the other reasons noted in the RD (p. 48), require the dismissal of Mr. Younger's conclusions.

In alleging that Staff skewed its production cost savings analysis, IPPNY simply repeats its arguments based on Mr. Younger's testimony (IPPNY's BE 8-11). For example, in its brief on exceptions, IPPNY's repeats Mr. Younger's claim that Staff's assumed 10% loss factor for transmission losses on Hydro Quebec's "(HQ") bulk transmission system should be replaced by his estimate of 19.4%. However, Dr. Paynter's Rebuttal testimony demonstrates that HQ's actual losses were less than 10%.⁵

Regarding the cost of Canadian hydroelectric resources, Staff's rebuttal update, which was adopted by the ALJs, appropriately accounted for the costs of additional transmission investments in Canada associated with delivering new hydroelectric resources to the Facility.⁶ Similarly, IPPNY reiterates its witness's testimony on the cost of the CCGT alternative, while ignoring Staff's Rebuttal that Mr. Younger was counting only a fraction of CCGT costs, based on short-term market conditions (excess capacity). As Staff further explained in rebuttal,⁷ to make a fair comparison, one would have to similarly look at short-term market conditions for Canadian hydroelectric resources, which could reduce the cost of the Champlain Hudson/HQ Hydro resources to just \$2.8 billion, a nearly \$8 billion reduction from Staff's estimate of \$10.5 billion. Applying this adjustment to IPPNY's chart (BE at 10) would increase every element by almost \$8 billion, leading to

⁵ Transcript ("tr.") 178 and Exhibit ("ex.") 199.

⁶ Tr. 175-178

⁷ Tr. 181 and Ex. 202, p. 1

the conclusion that Champlain Hudson/HQ Hydro would indeed be economic over the life of the Project, even accounting for short-term market conditions.

3. The record demonstrates that the economic analysis relied on by IPPNY in opposing the Facility are inaccurate and/or irrelevant to the Commission's determination.

First, IPPNY claims that the RD errs in failing to credit Mr. Younger's first analysis, "Analysis Based on Historic Pricing" (referred to as "Cash-Flow" analysis in the RD). This analysis assumed that HQ could sell an additional 1,000 MW at the New York border, without affecting market prices there. (Tr. 189). The assumption is absurd. As Staff explained in rebuttal, and as referenced in the RD (p. 47, note 79): "[w]ere HQ to simply sell this additional energy at its border, this could cause a substantial reduction in the market price at the border, which would be exacerbated by transmission constraints within the New York system. Similar concerns would apply to exports to other regions. Moreover, this reduction in price would impact HQ's existing exports as well, representing a significant risk to HQ's profitability." (Tr. 175) Indeed, HQ noted these very concerns in its response to the New York Energy Highway Request for Information: "In addition to transmission upgrades in Quebec, substantially increasing power flows from Hydro-Quebec would likely also require transmission upgrades in New York to remove existing deliverability constraints." (Tr. 182) For this reason, as well as other reasons addressed in Staff's rebuttal testimony (at Tr. 187-190), IPPNY's "Cash Flow" analysis is fundamentally flawed, and the RD was correct to dismiss it.

Next, IPPNY refers to Mr. Younger's other economic analysis, labeled "Production Cost Modeling of the Project", which purported to apply the NYISO's Congestion Assessment and Resource Integration Study (CARIS) methodology to CHPE. The RD correctly dismissed this "CARIS" analysis, because it applies to

regulated projects rather than merchant projects. (RD at 48) IPPNY admits this point in its BE (at 17), yet continues to advance this inappropriate test.

As Staff explained in rebuttal, IPPY's CARIS-based analysis, like its "Cash Flow" analysis, fails to account for HQ's legitimate financial interests in the Project: "As a merchant project, CHPE will have to meet the needs of its financial backers. They will consider their own financing costs, which may be very different than the CARIS method's generic 16% levelized carrying charge rate. For the benefits, the financial backers will not be calculating 10 years of 'New York Production Cost Savings,' as in CARIS, but rather estimating their potential market-based revenues over the next 35 years or more. HQ will be concerned with finding a market for its new hydroelectric supplies and taking into account their potential impacts on market prices and congestion. These valid considerations are all outside the narrow scope of the CARIS analysis." (Tr. 192-193) For these reasons, as well as others documented in Staff's rebuttal, IPPNY's "Production Cost Modeling" analysis is fundamentally flawed and must be dismissed. (Tr. 190-193)

4. The record supports the Facility's expected capacity benefits.

IPPNY appears to be confused by the RD's recommendations regarding installed capacity, at pp. 56-57. This section of the RD relates to "Capacity Market Savings," i.e. potential reductions in capacity market prices in CNY. The RD clearly states: "We are not persuaded that capacity price savings should be considered as a factor supporting the need or public interest findings." However, the RD goes on to recognize that CHPE "will offer additional transmission capacity in an area that could benefit from it." The RD's conclusions are entirely consistent with the Staff position in this case. Staff did not address capacity market price impacts in its testimony,

limiting its analysis of price impacts to the wholesale energy market only, for the very reasons given by the ALJs. However, Staff's long-term economic analysis appropriately recognized that CHPE, combined with Canadian hydroelectric resources, would avoid the need for 1,000 MW of gas-fired generation capacity in CNY. (JP at pp. 47 and 50-51; Staff's Initial Statement in Support, pp. 25-28; and Tr. 195-197) Staff rebutted IPPNY's arguments that a gas-fired CCGT in CNY would provide greater long-term capacity benefits than CHPE/HQ Hydro resources, noting: "The only currently proposed CCGT in NYC is NRG's Berrians project. This is proposed to interconnect at exactly the same NYPA substation in Astoria as CHPE proposes." (Tr. 195) Thus CHPE, by delivering hydroelectric resources into CNY, would provide long-term capacity benefits comparable to 1,000 MW of installed capacity via the addition of CCGTs in CNY, as recognized by the RD at p. 57.

5. Staff's wholesale price impacts analysis demonstrates additional benefits expected from the Facility and supporting a determination of need.

IPPNY objects to the RD's conclusions regarding wholesale energy price reductions, claiming: "The consensus opinion of IPPNY and Staff (apparently not shared by Applicants' witness Julia Frayer) is that wholesale price change estimates are inherently unreliable because, inter alia, they do not account for market responses." (IPPNY BE at 20) IPPNY mischaracterizes Staff's position. Staff's analysis of wholesale price impacts, provided by witnesses Gjonaj and Wheat based on GE-MAPS modeling of Production Cost Savings for 2018, estimated wholesale market price benefits of \$492 million for New York State. Even allowing for adjustments proposed by IPPNY witness Younger, there remains wholesale market price benefits of \$281 million for 2018. (Tr. 258) Staff recognized that wholesale market price benefits "tend to be shorter term in nature, meaning that they can be expected to decline and

diminish over time as market participants (suppliers and consumers) adjust their behavior in response to the immediate reduction in prices expected to result from additional supply.” (Tr. 245) IPPNY further argues that “where, as here, any such wholesale price reductions would be caused by uneconomic entry, those price reductions would be the result of anti-competitive price suppression and cannot be considered a benefit.” (IPPNY BOE at pp. 19-20) However, the RD appropriately rejected IPPNY’s claim that CHPE represents “uneconomic entry” (RD at 48), so IPPNY’s argument of anti-competitive price suppression collapses.

C. THE RECORD CONCLUSIVELY REFUTES IPPNY’S ARGUMENT THAT THE FACILITY INCREASES ELECTRICITY PRICES AND IMPAIRS THE COMPETITIVE MARKETS.

1. The record demonstrates that wholesale price increases at the US-Canadian are likely to decrease with the Facility.

IPPNY asserts that wholesale prices will increase at the US-Canadian border due to CHPE, and claims “the basis for the assumption of increased border prices was Dr. Paynter’s testimony. ... In fact, it is the consensus of DPS Staff and IPPNY ...” This is simply false. In fact, DPS Staff determined that the Project would reduce prices across New York State, including Upstate, through the delivery of 1,000 MW of additional hydroelectric resources from Canada to CNY; see Staff’s Reply Brief at 11. IPPNY’s claim is based, not on Staff’s testimony, but on IPPNY’s hypothetical, presented on cross-examination, which assumes that HQ would invest in 1,000 MW of additional hydroelectric supply and sell this at the New York border, without any transmission upgrades in New York. As Staff explained in its Reply Brief (p. 11), the “increase” in border prices is only in comparison to the depressed prices in IPPNY’s hypothetical; compared to current market prices, the impact of the additional hydroelectric resources delivered by CHPE is to reduce prices statewide, including at the Canadian

border. (Tr. 277) It should also be noted that here, IPPNY's BE recognizes the impact on prices from an HQ strategy of selling its additional supply at the New York border; but these same impacts are studiously ignored in the rest of IPPNY's BE, because they render IPPNY's economic analyses invalid.

2. The record demonstrates that the Facility will not harm competitive markets.

IPPNY's claim of harm to competitive markets is based on its assertion that CHPE is uneconomic and would be financed by contracts subsidized by New York consumers. As noted above, IPPNY's economic analyses have been discredited, so its assumption that CHPE is uneconomic is unsupported. Moreover, IPPNY's professed concern about "chilling new investment" is not credible; indeed, it is difficult to imagine a more serious threat to competitive markets than to deny siting, thereby preventing a developer from even attempting to enter the market. See also Staff's Reply Brief (pp. 14-15).

Entergy observes (BE at 6-16) that HQ has expressed interest in contracting with the Applicants, then jumps to the conclusion that HQ would likely only be willing to undertake such obligation if it were offset by an out-of-market, long-term contract to recoup the price it paid to the Applicants to secure long-term transmission rights on the Facility. Staff, however, noted that HQ's "business model involves long-term investments and hydroelectric projects and associated transmission lines"⁸ and that it is currently developing several large hydroelectric projects, expected to enter service over the next several years, which would be capable of supplying electricity to the Facility.⁹ Staff explained: "HQ bears the construction risks not only for its hydroelectric projects but also for its transmission facilities to deliver the energy to

⁸ Tr. 188

⁹ Tr. 175-176

distant loads. Moreover, HQ and other Canadian developers have a direct financial interest in obtaining the highest market price for their electricity. Therefore, it is not surprising that HQ has expressed an interest in helping to finance CHPE, in order to deliver its new electricity supplies to the relatively high-cost New York City market. Staff has provided this information on HQ's hydroelectric projects and its financial interests to help complete the record in this case and rebut claims that CHPE's financing could only come from New York loads."¹⁰ The ALJs' rejection of Entergy's speculation was thus fully supported by the record.

Without evidence on the point, Entergy simply mischaracterizes the cost recovery associated with the Astoria Rainey Cable, claiming that its entire cost would be recovered on a non-merchant basis. (BE at 9) In fact, most (if not all) of its costs would be recovered on a merchant basis, as explained in Staff's Statements In Support (Initial, pp. 10-11; and Reply, pp. 27-28). Entergy claims as well that the ALJs failed to subtract the cost of the Astoria-Rainey Cable from the economic benefits that they identified (Entergy BE at 9, fn. 13). This too is simply false. In fact, the ALJs relied on Staff witness Paynter's (updated) production cost analysis, which fully accounted for the cost of the Astoria-Rainey Cable.¹¹

D. THE RECORD ESTABLISHES THE BASIS OF NEED FOR THE PROJECT WHICH IS BASED ON SEVERAL FACTORS INCLUDING RELIABILITY AND PUBLIC POLICY.

Entergy and IPPNY raised exceptions to the aspects of the RD that found a need for the Facility based on the reliability and economic benefits. For example, IPPNY claims "The RD erroneously finds that the Project would satisfy a resource adequacy need pursuant to the NYISO's 2012 Reliability

¹⁰ Tr. 166-167

¹¹ Ex. 202 p.1

Needs Assessment ('RNA') ..." (BE p. 2) IPPNY then repeats its litigation position regarding the 2012 RNA (BE pp. 31-35). Here IPPNY has mischaracterized both the RNA and the RD. As Staff Witness Paynter explained in Rebuttal, "the function of the RNA is to identify potential shortages of capacity or other reliability needs that might require a regulated investment ... in the event there is insufficient merchant investment. ... Thus the entry of merchant projects in advance of a 'reliability need' is not only consistent with, but is in fact an integral part of the NYISO's market-based planning process." (Tr. 194-195) CHPE is not requesting ratebased treatment as a regulated investment, and thus there is no need to address whether it satisfies a "reliability need" pursuant to the RNA. Instead, CHPE represents a merchant investment, which would help to avoid the need for potential regulated investments. This is exactly what the RD concludes: "... we find that this proceeding presents a viable opportunity to authorize such an investment in electrical infrastructure in advance of an actual reliability need." (RD at 30).

IPPNY and Entergy also claim that the NYISO's 2012 Reliability Needs Assessment (RNA) contained a number of speculative assumptions that should not be relied upon, and that the NYISO's 2012 CRP.¹² They also claim that the economic benefits are uncertain and have not been demonstrated.¹³

However, NYISO's 2012 CRP has not yet been issued; and while the draft version discusses some changes that could reduce reliability needs, it also discusses other changes (such as the retirement of the Danskammer unit) that could increase reliability needs. The Opponents' attempt to cherry-pick changes should be rejected. Moreover, it is uncontroverted that the Facility will enhance system reliability by increasing

¹² Entergy BOE, pp. 16-19; IPPNY BOE, pp. 31-37.

¹³ Entergy BOE, pp. 20-24; IPPNY BOE, pp. 22-31.

delivery capability into CNY, a load pocket, where electricity peak demand exceeds the existing transmission import capability. By increasing the import capability, the Facility provides increased reliability and reduces the dependence on local generation.¹⁴ Neither Entergy, nor IPPNY dispute this general concept.

In addition, the Commission has previously found a need for a facility when the NYISO process did not find its own need.¹⁵ The RNA conclusions are based on various assumptions, while prudence requires that other scenarios be adequately considered.¹⁶ Moreover, uncertainty concerning probability of an occurrence does not necessarily equate to it being improbable or unlikely.

Another factor is that the proposed Facility is expected to promote competition and provide economic energy benefits for electric customers throughout CNY and the rest of the state. As discussed above, the overall impact of the additional hydroelectric resources delivered by the Facility is to reduce prices across New York State, including Upstate. (See also Tr. 277)

Even if Entergy and IPPNY's arguments had merit (which, as explained above, they do not), a failure of one individual factor (or even a few factors) to support a finding

¹⁴ Staff Brief, p. 9.

¹⁵ Case 08-T-1245, Application of Bayonne Energy Center, LLC for a Certificate of Environmental Compatibility and Public Need for the Construction of the New York State Portion (Kings County) of a 6.6 Mile, 345 kV AC, 3 Phase Circuit Submarine Electric Transmission Facility Pursuant to Article VII of the PSL., 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 Certification (issued November 12, 2009), pp. 12-13.

¹⁶ See NYISO 2010 Reliability Needs Assessment - Executive Summary, September 2010, p. i (stating "[t]he NYISO will continue to monitor these developments and will conduct appropriate reliability studies as necessary).

of need does not require the conclusion that need cannot be found. The finding of need requires the Commission to consider the totality of all of the relevant factors appearing in the record, as a whole, not individual factors in a piece-meal fashion. The required finding of need is supported by the Facility's ability to (i) deliver 1,000 MW of electricity from the Canadian border to CNY; (ii) increase fuel diversity and the use of renewable energy resources;¹⁷ (iii) reduce greenhouse gas emissions; and (iv) enhance system reliability significantly by providing a major new electric energy supply to the most electrically constrained location of the state, the City of New York (CNY).

The bases of the need for the Facility are consistent with prior findings of the Commission related to reliability,¹⁸ economics,¹⁹ wholesale competition,²⁰ and public policy.²¹ Because the record demonstrates that the vast majority, if not all, of the power that would be transmitted by the Facility is

¹⁷ The Facility will increase fuel diversity by decreasing CNY's reliance on natural-gas-fired generation by delivering almost exclusively (at least 94%) wind and hydro-power to CNY See JP ¶ 125.

¹⁸ Case 10-T-0080, Niagara Mohawk Power Corporation d/b/a National Grid, Order Granting Certificate of Environmental Compatibility and Public Need (issued February 24, 2011); 06-T-0710, Consolidated Edison Company of New York, Inc., Order Granting Certificate of Environmental Compatibility and Public Need (issued August 23, 2010).

¹⁹ Case 70126, Power Authority of the State of New York, Op. No. 85-2, Opinion and Order Granting Certificate of Environmental Compatibility and Public Need (issued January 30, 1985).

²⁰ Matter of CNG Transmission Corporation v. New York State Public Service Commission, et al., 185 A.D.2d 671 (4th Dept., 1992).

²¹ Case 07-T-0140, Noble Wethersfield Windpark, LLC, Order Adopting the Terms of a Joint Proposal and Granting Certificate of Environmental Compatibility and Public Need (issued December 21, 2007). The Governor stated his support for "an energy expressway down from Quebec." Available at: <http://www.governor.ny.gov/assets/documents/Building-a-New-New-York-Book.pdf>, p. 12.

renewable and will not contribute to greenhouse gas emissions, the Facility also clearly advances important public policies.²² For all of the above reasons, IPPNY and Entergy's arguments should be rejected.

E. THE RECORD ESTABLISHES THE FACILITY REPRESENTS THE MINIMUM ADVERSE ENVIRONMENTAL IMPACTS.

While it did not proffer any evidence in this proceeding, Entergy claims that the record is insufficient to support a finding of minimization of adverse environmental impact to sturgeon habitat (Entergy BE at 24-27). The record, however, shows that such finding can indeed be made with respect to Shortnose and Atlantic sturgeon.²³ As the ALJs recognized (RD at 94), the proposed Facility route and Certificate conditions ensure that the Facility represents the minimum adverse environmental impact, given the various pertinent considerations that are detailed in the record.

Entergy alleges without evidentiary support that the mere fact that an electromagnetic field ("EMF") will exist shows that the Facility will not represent the minimum adverse environmental impact on sturgeon (Entergy BE at 27-30). As the record demonstrates, however,²⁴ because the cables will be shielded and buried or covered with protective structures, the magnitudes of the electric fields are expected to be inconsequential and adverse impacts to fish species from magnetic fields associated with such cables are not expected to be significant. Thus, the ALJs correctly rejected Entergy's argument (RD at 98-99).

Without citing any precedent, Entergy argues that the

²² See Hydro-Québec, Annual Report 2010, p. 3 (2011). Available at: http://www.hydroquebec.com/publications/en/annual_report/pdf/rapport-annuel-2010.pdf. (referenced in the Joint Proposal, p. 54, n. 9.).

²³ Exhibit 121.
Exhibits 24, 92, 100 and 121.²⁴

Commission must defer to the U.S. Army Corps of Engineers ("USACE") on cable burial issues (Entergy BE at 30-33). Commission precedent, however, is to the contrary.²⁵ Thus, the ALJs rejection of Entergy's position and reliance on proposed Certificate condition 11 are appropriate (RD at 87-88).

F. THE RECORD ESTABLISHES THAT THE FACILITY IS CONSISTENT WITH LONG-RANGE PLANNING OBJECTIVES.

Central Hudson argues that the Commission should require the applicant to "achieve[] meaningful improvements to known grid constraints and problems"²⁶ before the Commission can make the required statutory finding under Article VII that the Facility "conforms to a long-range plan for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems, which will serve the interests of electric system economy and reliability."²⁷ Central Hudson argues that the RD's conclusion that the Facility would provide electric system benefits is not sufficient.

As established in Staff's Brief, the Facility is consistent with long-range plans identified in the most recent State Energy Plan, which establishes as a policy objective that the state of New York will support increased use of renewable energy and energy systems that enable the state to significantly

²⁵ Case 06-T-1298, New York State Electric & Gas Corporation, Order Adopting the Terms of a Joint Proposal with Exceptions and Conditions and Granting a Certificate of Environmental Compatibility and Public Need (issued January 17, 2008); Case 08-T-0034, Hudson Transmission Partners, LLC, Order Granting Certificate of Environmental Compatibility and Public Need (issued September 15, 2010); and Case 10-T-0080, Niagara Mohawk Power Corporation d/b/a National Grid, Order Granting Certificate of Environmental Compatibility and Public Need (issued February 24, 2011). See also Case 01-F-1276, TransGas Energy Systems LLC, Order Concerning Further Proceedings (issued June 25, 2007).

²⁶ Central Hudson BOE, p. 13.

²⁷ PSL §126(1) (d).

reduce greenhouse gas emissions.²⁸ The New York State Energy Plan further states that an increase in renewable energy will require additional transmission in New York.²⁹

Contrary to Central Hudson's claims, the Facility would expand the State's electrical grid and assist in relieving congestion on the State's existing HVAC electrical grid. The Facility would add an additional tie to Quebec, providing the State with greater access to Quebec's hydroelectric power. Energy imports over the Facility would not consume capacity on New York's existing HVAC transmission system, and by increasing supply downstream of the congested interfaces, the Facility would reduce congestion on New York's HVAC transmission interfaces. (See Staff's Initial Brief at 34-36)

The Facility is also consistent with CNY's long-range plans established in PlaNYC, in which CNY recognizes that providing residents with increased access to renewable energy supplies will simultaneously reduce electricity prices, local air pollution, and greenhouse gas emissions in the City of New York.³⁰ The ability of the Facility to advance these important public policy objectives of the State and CNY should be explicitly recognized by the Commission in issuing a Certificate. For all of these reasons, Central Hudson's arguments should be rejected.

G. THE RECOMMENDED CERTIFICATE CONDITIONS ARE APPROPRIATE.

1. Ordering Clauses 27-29

Central Hudson objects to proposed Certificate Conditions 27 through 29, because it claims that the conditions would require Central Hudson to "exhaust" administrative

²⁸ See Energy Infrastructure Issue Brief, New York State Energy Plan 2009 (December 2009), p. 9, available at <http://www.nysenergyplan.com/2009stateenergyplan.html>.

²⁹ *Id.* at 1.

³⁰ See PlaNYC (2007), pp. 112-117, available at: <http://www.nyc.gov/html/planyc2030/html/theplan/the-plan.shtml>.

remedies prior to seeking other legal remedies, thus impairing its legal rights. The argument appears to be made simply for the sake of the argument itself and should be ignored as noise. Specifically, Central Hudson argues that RD should have concluded that nothing in the proposed Certificate Conditions is intended to preclude Central Hudson from pursuing judicial remedies or to absolve Applicants of any legal duties. Interestingly, the argument is made directly after Central Hudson quotes the RD as stating exactly that.³¹ Central Hudson also points out that Staff and the Applicants both made affirmative statements that the proposed Certificate Conditions are not intended to, nor can they, impair Central Hudson's legal rights.

It is axiomatic that a Certificate granted pursuant to PSL Article VII only places obligations and limitations upon the Certificate Holder. Seeing no real controversy here, Staff believes that Central Hudson's demands for Commission declarations are superfluous and no clarifications to the proposed Certificate Conditions are necessary (or useful).

2. Proposed Certificate Condition 27 is Appropriate as written.

Central Hudson claims that proposed Certificate Condition 27 should be rewritten to ensure that Applicant's are subject to strict liability regarding any impacts the Facility may have on existing collocated infrastructure. (Central Hudson BE p. 7-9). Staff continues to believe that the ordering clause places sufficient burden on the Certificate Holders to ensure proper construction and safe and reliable operation of the Facility as well as any collocated infrastructure. Central

³¹ Central Hudson BE p. 3 ("there is no basis for concluding that the provisions [Certificate Conditions 27-29] are designed to affect or displace laws governing parties' existing rights and obligations." [quoting RD p. 128]).

Hudson's claim that the Applicant's have stated a willingness to accept strict liability misconstrues Applicant's statements which appear to relate only to the economic risk associated with the Facility. Applicants' statements do not reflect a willingness to accept the risk of others' negligence, gross negligence or criminal activity. Even if Applicants were so inclined, such a complete shift of the risk would essentially relieve other owners of their duty to properly maintain their collocated infrastructure and Staff believes that such a policy decision should be avoided.

3. Proposed Certificate Condition 5 is appropriate as written.

Central Hudson continues to claim that proposed Certificate Condition 5, relating to property acquisition, is too broad in two respects. First, Central Hudson argues that the portion of the condition requiring the Applicants to "acquire and maintain the continuing rights to enter onto and use certain additional lands" is overly broad. Second, the utility claims that the portion of the certificate condition requiring "terms prohibiting the owners of such land from taking any action that would interfere with such repair and maintenance activities" would provide Certificate Holders with "categorically paramount" rights over Central Hudson. (Central Hudson BE p. 9-11).

As stated in Staff's Reply Brief, Central Hudson's concerns highlight its apparent misunderstanding of the import of the certificate condition of which it complains. Read as a whole, Certificate Condition 5 is appropriate and will not interfere with Central Hudson's ability to maintain its existing infrastructure. First, the requirement to obtain the right to enter and use certain lands is limited to "certain additional lands immediately adjacent to the Facility ROW needed for repair and maintenance purposes." The requirement is not universal as Central Hudson posits. Rather, it is limited to those property

rights that the Certificate Holders will need in order to maintain and repair their Facility in the future. The requirement that the property rights be sufficient to avoid interference with the Certificate Holders' ability to maintain and repair their Facility, is also meant to ensure that Certificate Holders will not be excluded from performing necessary maintenance and repair of the Facility by underlying landowners. Nothing in the certificate condition would prevent Central Hudson from repairing its own infrastructure. Moreover, the requirements placed on Certificate Holders by proposed Certificate Condition 27, that the Facility be fully compatible with collocated infrastructure, prevent reading the property rights discussed in proposed Certificate Condition 5, interfering with Central Hudson's infrastructure.

4. Certificate Condition 15: Ratepayer Protection

A number of parties argue that proposed Certificate Condition 15.b.³² is insufficient to ensure that that captive ratepayers were not asked to pay for the Facility. As described in the condition, the HVDC Transmission System is proposed as a merchant facility, meaning that it would be developed, financed, constructed and operated with no reliance on cost-of-service rates and none of its costs will be put into utility rate base. Likewise, all costs associated with the use of the Astoria-Rainey Cable to deliver electric energy and capacity over the HVDC Transmission System, will be recovered on a merchant basis with no reliance on cost-of-service rates and will not be included in utility rate base. If the Applicants change their business model and attempt to recover costs through cost-based rates, the Certificate would be deemed invalid. Proposed Certificate Condition 15.b. is an appropriate condition to impose on the Applicants that would ensure protection of captive

³² Evidentiary Hearing Exhibit 150.

ratepayers.

Opposing parties have not explained why consumers are at risk and how proposed Certificate Condition 15 fails to minimize that risk. Allegations of a phantom subsidy (the origin and form of which are never fully explained) must be rejected as baseless and recognized for what they are, fear of additional market competition.

H. Conclusion

The record in this proceeding enables the Commission to: (1) make the findings required in connection with the construction and operation of an electric transmission line, as set forth in PSL §126(1)(a), (b), (c), (d)(1) and(2), (f) and (g); and (2) impose appropriate certificate conditions.. For the foregoing reasons, the arguments presented by those opposing the grant of a Certificate to the Applicants should be rejected.

Respectfully submitted,

Staff of the New York State
Department of Public Service

Dated: Albany, New York
February 1, 2013.