

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

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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 )  
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. )  

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Case No. 10-T-0139

**MOTION OF CHAMPLAIN HUDSON POWER EXPRESS, INC.  
AND CHPE PROPERTIES, INC. TO STRIKE BRIEFS ON EXCEPTIONS  
FILED OUT OF TIME**

Champlain Hudson Power Express, Inc. (“CHPEI”) and CHPE Properties, Inc. (“CHPE Properties” and, collectively with CHPEI, the “Applicants”) submit this Motion to Strike the Briefs of Exceptions Filed Out of Time by the New York Business Council (the “Business Council”) and by Entergy Nuclear Power Marketing, LLC and Entergy Nuclear FitzPatrick, LLC (“Entergy”) pursuant to Rule 3.5 of the Commission’s Procedural Rules, 16 N.Y.C.R.R. § 3.5 (2012).

**INTRODUCTION AND  
SUMMARY OF POSITION**

On December 27, 2012, Acting Secretary Jeffrey C. Cohen issued the Recommended Decision in this proceeding (the “RD”), along with a Notice for Filing Exceptions (the “Notice”). In the Notice, Secretary Cohen ruled that: “Briefs on exceptions are due electronically to the Secretary at [secretary@dps.ny.gov](mailto:secretary@dps.ny.gov) and to all active parties by 4:00 p.m. on January 17, 2013.”

On January 17, 2013, the Business Council and Entergy both filed briefs on exceptions in this proceeding. According to the Commission's File Room, these briefs were not received by the Commission electronically until 4:17 p.m. and 4:06 p.m., respectively.<sup>1</sup> Counsel for Applicants did not receive Entergy's brief on exceptions by e-mail until approximately 4:58 PM. As of 4:00 p.m. on January 18, 2013, Counsel for Applicants have still not received a copy of the Business Council's brief on exceptions by e-mail, but did download a copy of that document shortly after it appeared on the Commission's web site this morning.

Applicants respectfully request that these briefs on exceptions be struck from the record in this proceeding on the ground that they were not filed with the Commission and served on Applicants within the time limit established by the Commission's Secretary in the Notice.

### ANALYSIS

#### **I. THE COMMISSION SHOULD STRIKE THE BRIEFS ON EXCEPTIONS FILED BY THE BUSINESS COUNCIL AND ENTERGY**

The Notice issued by the Commission Secretary in this case was clear in requiring that all briefs on exceptions in this proceeding be both filed electronically with the Commission and served on the parties by 4:00 p.m. on January 17, 2013. Both the Business Council and Entergy failed to satisfy either of these requirements. Nor did they timely seek an extension of the time for complying with those requirements for good cause. Accordingly, their briefs on exceptions must be struck in their entirety.

Applicants would note that the Commission has a long history of strictly applying the time limits for filings in Commission proceedings where, as in this case, the party or parties in question fail to seek an extension for good cause prior to the filing date established by the Commission. In these very proceedings, the Presiding Administrative Law Judges refused to

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<sup>1</sup> See e-mail message from the Secretary's Office dated January 18, 2013 annexed hereto as Attachment A.

consider arguments made by Applicants in a pleading filed shortly after an unusual 12:00 p.m. filing deadline established in a prior ruling even though that pleading was properly served on all parties shortly after that deadline.<sup>2</sup> Similarly, in Case 09-E-0229, the Commission refused to accept a petition for rehearing filed at about 5:04 p.m. by an e-mail that did not include other parties as a recipient.<sup>3</sup>

Because the Business Council and Entergy both failed to submit their briefs on exceptions with the Commission and to serve those briefs on Applicants prior to the 4:00 p.m. deadline established in the Secretary's Notice or to timely seek an extension of that filing deadline for good cause shown, the Commission must reject those briefs on exception in their entirety.

Respectfully submitted,

*/s/ George M. Pond*

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Express, Inc. and CHPE Properties, Inc.*

Dated: January 18, 2013

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<sup>2</sup> Case 10-T-0139, *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 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*, Ruling Denying Motion to Strike, at footnote 3 (Issued and Effective July 23, 2013).

<sup>3</sup> Case 09-E-0299, *Petition of the Village of Frankfort for Approval, Pursuant to Section 68 of the Public Service Law, of the Provision of Electric Service to an area of the Town of Frankfort*, Order Denying Petition For Rehearing And Clarification, slip op. at 4-5 (Issued and Effective January 21, 2011).

# **ATTACHMENT A**

## Senlet, Ekin

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**From:** Eva.Gnacik@dps.ny.gov  
**Sent:** Friday, January 18, 2013 1:40 PM  
**To:** Senlet, Ekin  
**Subject:** Re: Case 10-T-0139: Brief on Exceptions Filings Filed on January 17, 2013 [DMS-ACTIVE.FID6455]

Ekin,

- 1) The Business Council's email was received by the Secretary's office with a time stamp of 4:17pm
- 2) Entergy was received with a time stamp of 4:06pm.

If you have any other questions, please let me know. Thanks.

Eva Gnacik  
Central Operations  
NYS Dept. of Public Service  
(518)486-2676

Please Note: As of November 16, 2011 my email address is: [Eva.Gnacik@dps.ny.gov](mailto:Eva.Gnacik@dps.ny.gov)

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Any unauthorized disclosure or dissemination of this information is strictly prohibited.

From: "Senlet, Ekin" <[ESenlet@hblaw.com](mailto:ESenlet@hblaw.com)>  
To: "'Eva.Gnacik@dps.ny.gov'" <[Eva.Gnacik@dps.ny.gov](mailto:Eva.Gnacik@dps.ny.gov)>  
Date: 01/18/2013 01:18 PM  
Subject: Case 10-T-0139: Brief on Exceptions Filings Filed on January 17, 2013 [DMS-ACTIVE.FID6455]

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Dear Ms. Gnacik,

Do you mind letting me know at what time yesterday, the Secretary's Office received the Brief on Exceptions from the following parties?

1. The Business Council
2. Entergy Nuclear FitzPatrick, LLC, Entergy Nuclear Power Marketing, LLC

Thank you for your assistance in this matter,

Best Regards,

Ekin Senlet

## **Ekin Senlet**

Associate

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