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Via Electronic Mail

Acting Secretary Jeffrey C. Cohen
New York State Department
of Public Service
Three Empire State Plaza
Albany, NY 12223

Re: CASE 10-T-0139: CHAMPLAIN HUDSON POWER EXPRESS, INC.

Dear Acting Secretary Cohen:

In accordance with your Notice for Filing Exceptions, issued on December 27, 2012, Con Edison submits this letter in response to an issue raised in the Brief on Exceptions of Entergy Nuclear Power Marketing, LLC and Entergy Nuclear Fitzpatrick, LLC (collectively, “Entergy”), dated January 17, 2013 (the “Entergy Brief”).¹ As we have previously stated, Con Edison takes no position on the Project. However, we do want to address one issue raised by Entergy.

The issue raised by Entergy relates to the alleged adverse impact this Project would have on consumer rates. Entergy argues (1) that the Project is “grossly uneconomic” and will require subsidies from New York consumers; (2) that because the project will require subsidies, it cannot be considered to be a merchant project; (3) that Certificate Condition 15 has a loophole because, while it prohibits *direct* subsidies, it does not prohibit *indirect* subsidies; and (4) that a “likely scenario” for obtaining such an indirect subsidy would be for a shipper on the Project, such as Hydro Quebec, to enter into an above-market, long term contract with a customer for energy delivered by the Project to New York City (Entergy Brief at pp. 5-16). For the reasons discussed below, Entergy’s arguments are wrong and should be rejected.²

Before discussing the errors in Entergy’s arguments, we provide background on this issue. One of Con Edison’s major concerns with the Project was the potential that the proposed Certificate Condition 15 allowed Applicants the opportunity to shift the

¹ All defined terms used herein shall have the meanings attributed to them in Con Edison’s previous submissions, unless specified otherwise.

² Like Entergy, IPPNY, in its Brief on Exceptions dated January 17, 2013, engages in a hypothetical argument about the possibility of indirect subsidies, which IPPNY speculates may come about as a result of a “discriminatory procurement process.” (IPPNY Brief at p. 30). For the same reasons discussed herein with respect to Entergy’s arguments, IPPNY’s arguments should likewise be rejected.

risks and costs of the Project from their investors to utility ratepayers. In light of those concerns, Con Edison objected to that certificate condition and spent months negotiating revisions with Applicants that would alleviate those concerns. Ultimately, Con Edison obtained Applicants' agreement to make changes to that certificate condition that we believe provides the strongest possible protections to customers from any subsidization of this Project.

In a Stipulation dated, June 4, 2012, Con Edison and Applicants agreed to revise proposed Certificate Condition 15 to require that (1) the costs associated with the construction and operation of the HVDC Transmission System³ and (2) the costs associated with the use of the Astoria-Rainey Cable by shippers also using the HVDC Transmission System (collectively, the "Merchant Facilities") are to be recovered by Applicants on a purely merchant basis. The Stipulation also provides that any attempt by the Certificate Holders to recover any of the costs of the Merchant Facilities in cost-of-service rates set by a Federal or State regulatory entity, or to include any such costs in utility rate base, would result in the loss of the Certificate. (RD at pp. 68-69) Applicants also agreed to waive all their rights under section 205 of the Federal Power Act, 16 U.S.C. § 824d, to file cost-based rates with FERC for the Facility. Finally, as noted in the RD, the Stipulation also provides that prior to commencing construction of the facility, Certificate Holders must confirm that they have received binding contractual commitments from one or more financially responsible entities for no less than 75% of the facility's firm transmission service for a period of no less than 25 years. (RD at pp. 11 and 69)

We now turn to Entergy's arguments. First, Entergy's challenge of the Project's merchant status misses the mark. That status is not determined by Entergy's estimate of the Project's profitability. Profitability has nothing to do with merchant status. The RD's definition of "merchant" coincides with FERC's definition of "merchant" as developers who assume the market risk of a project and have no captive customers from which to recover the costs of the project. *See, e.g., Chinook Power Transmission, LLC*, 126 FERC ¶ 61, 134 (2009). This Project meets these criteria except for a portion (less than 10 percent of the Project's cost) of the Astoria-Rainey cable.⁴

Second, Entergy's speculation about some possible future *indirect* subsidy also misses the mark. For this to come about, some customer would have to step forward and volunteer to pay above-market prices for energy delivered to New York City by this Project. This is a speculative and highly unlikely scenario and Entergy fails to explain who and why someone would volunteer to pay above-market prices for energy. In addition, New York State established a competitive market for the wholesale supply of electricity to consumers. That policy decision permitted competitive entities to form their own views on future demand, competitive entrants, costs and prices. The 75% contract

³ The Stipulation defines the "HVDC Transmission System" as the HVDC transmission line from the Canadian border to Con Edison's Luyster Creek property in Astoria, Queens, and the Converter Station.

⁴ We assume that a small portion of the Astoria-Rainey cable will not be subject to merchant treatment, but that it will be subject to cost-of-service ratemaking by FERC, as well as intense scrutiny by the Commission under Certificate Condition 15 as to its costs. Given this extensive regulatory scrutiny, Entergy has not explained how ratepayer subsidy of the Astoria-Rainey cable is possible.

commitment will ensure that the project does not go forward without a substantial portion of the capacity under contract. If a willing buyer of that capacity establishes a price that is acceptable to the developer, that result is consistent with a competitive market. Entergy is essentially asking the Commission to second guess the profitability of the business plan of a participant in a competitive market. This is not the role of the Commission as long as ratepayers are protected from shouldering the risks of that business plan, which they are, under the June 4, 2012 Stipulation.

For these reasons, we urge the Commission to reject Entergy's speculative and far-fetched arguments of *indirect* subsidy of this Project by consumers and to adopt, in their entirety, the June 4, 2012 Stipulation and the Revised Proposed Certificate Condition 15.

Respectfully submitted,

s/ Shira R. Rosenblatt

cc: Administrative Law Judges Casutto and Phillips
Active Parties (via e-mail)