

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

RESPONSE TO MOTION

On October 2, 2012, Champlain Hudson Power Express, Inc. (“CHPEI”), CHPE Properties, Inc. (“CHPE Properties” and, collectively with CHPEI, the “Applicants”), Staff of the New York Department of Public Service (“Staff”) and the City of New York (“CNY”, and collectively with Applicants and Staff, the “Movants”) filed a motion (the “Motion”) requesting that Your Honors incorporate by reference or take official notice of the New York Independent System Operator, Inc.’s (“NYISO”) final 2012 Reliability Needs Assessment (“RNA”) (“2012 RNA”). Pursuant to Your Honor’s Ruling Establishing Response Date, e-mailed to the parties on October 3, 2012, Independent Power Producers of New York, Inc. (“IPPNY”) hereby responds to the Motion.

IPPNY takes no position on whether Your Honors should incorporate by reference or take official notice of the 2012 RNA in its entirety. However, to provide an accurate record in this proceeding, IPPNY must respond to the Motion to correct Movants’ material misrepresentations, mischaracterizations and omissions and submits these comments to clarify the underlying purpose of the 2012 RNA and the assumptions on which it is based. When the 2012 RNA is viewed in the appropriate context, at least four reasons compel finding that the

Motion substantially overstates the significance of the 2012 RNA with respect to whether Applicants' proposed project is needed. Specifically, the Motion: (i) ignores the fact that it is the 2012 Comprehensive Reliability Plan ("CRP"), not the 2012 RNA, that definitively identifies and addresses reliability needs on the New York system; (ii) glosses over the conservative study assumptions in the 2012 RNA that drive the results on which the Motion focuses; (iii) ignores changes in the bulk power system that will offset the results of the 2012 RNA notwithstanding the fact that these changes were highlighted therein; and (iv) ignores the limited significance of reliability needs -- assuming any continue to be identified -- in the second five year study period. Accordingly, the 2012 RNA, if incorporated by reference here, does not "directly contradict[]" the testimony of Mr. Mark D. Younger. Nor does it "directly address[]" the disagreement between Mr. Younger and Ms. Frayer"¹ on the point that the Applicants' proposed project is not needed to ensure system reliability, now, or in the foreseeable future.

Turning first to the purpose of the 2012 RNA, its finding of need rests on the NYISO's conservative assumption that 1,704 MW of generation that had merely filed notices with the Public Service Commission ("Commission") (which, as discussed below, includes 268 MW of generation that has subsequently withdrawn its mothball notice) of their future intention to mothball their facilities temporarily had actually permanently retired those facilities.² The NYISO's decision to adopt this conservative assumption was, however, tied to the underlying (and limited) purpose of the RNA. As noted on pages 8-9 of the 2012 RNA, the RNA is simply the first step in the NYISO's overall Comprehensive System Planning Process ("CSPP"). The

¹ See Motion at 5-6.

² See page 24 of the 2012 RNA. The 2012 RNA states that there are several reasons the 2012 RNA found Reliability Needs related to resource adequacy by 2020 while the 2010 RNA did not:

1. Generation Capacity – Generation modeled for 2020 is about 1,000 MW less;
2. Load Forecast – The baseline load forecast for 2020 is slightly (200 MW) higher; and
3. Special Case Resources (SCRs) – projections for 2020 are about 100 MW less.

RNA is not the NYISO's final word on system reliability (as Movants imply); rather, it is simply the initial study intended to identify any potential threats to system reliability looking out over a ten-year window that is then used to develop the NYISO's CRP. The assumptions and findings of the RNA are then reviewed, and, more importantly, refined, in the CRP to reflect actual system needs. If a need is confirmed at this stage, the NYISO proceeds to determine the significance and pendency of the need, and thus, whether it is necessary to proceed with any solutions.

As it is used solely as one input into long-term planning (*i.e.*, it does not dictate system operations), the NYISO made conservative assumptions to conduct the analysis. It is the CRP, however, that establishes whether there is a system need. Mr. Younger was not required to address the 2010 CRP in his testimony because no needs were found in the 2010 RNA -- that finding ends the analysis. Two factors bear emphasis in this regard. First, the initial step in the CRP process is to update the RNA base case to take into account intervening system changes (*e.g.*, the system is updated with the most recent load and system information). This step is critical given changes in system conditions that have occurred in New York since the 2012 RNA base case was set as explained infra. Only if the CRP base case analysis confirms that the need continues to exist will the NYISO review solutions. Second, even if a need is confirmed, the NYISO then must focus on whether such need is expected to materialize in the first five year or second five year study period -- another critical fact given New York system conditions addressed below.

Turning next to the assumptions that underlie the 2012 RNA, the NYISO made a major change for this cycle's RNA. Specifically, it assumed that all generators that had filed a notice of an intention to mothball their facilities with the Commission should be treated as if they had

instead permanently retired their facilities, and thus, these facilities were excluded from the base-case analysis.³ However, as demonstrated by the testimony of Mark Younger and acknowledged by Applicants' witness, Ms. Julia Frayer, a generator that submits a notice of an intention to mothball a facility -- assuming it actually elects to proceed forward to mothball the facility -- has not retired its facility. A facility that retires can generally eliminate more costs, such as property taxes, that it generally does not avoid by mothballing. Therefore, when a generator elects to mothball its facility, it does so to retain the right for a period of time to re-enter the market if market conditions so warrant. As Mr. Younger explained in his testimony, many of the mothball intention notices that have been submitted to the Commission explicitly referenced their intent to return to the market when market prices became sustainable. For example, in its December 14, 2011 notice of intention to mothball its Gowanus Barges 1 and 4 units, totaling 268 MW, Astoria Generating Company, L.P. ("AGC") stated:

[A]s reflected by the NYISO's recent capacity Spot Market Auction results, the market clearing prices for the New York City ICAP Demand Curve currently are artificially suppressed with no relief in the future without the FERC taking action on the complaints in the FERC Proceedings. As I established in my affidavit that was submitted in support of the complaint that Astoria Generating filed jointly with TC Ravenswood, LLC to initiate the EL11-50 FERC Proceeding, due to the nature of the New York City (NYISO Zone J) market, the cost characteristics of various generating facilities in that market, and the reliability rules requiring load to source the vast majority of their capacity requirements from plants within Zone J, 80% of Astoria Generating's annual revenue (net of fuel) comes from capacity payments. Based on the current and forecasted New York City capacity market prices, the continued operation of the Facilities is, absent FERC action or other substantial market changes, not sustainable.

³ 2012 RNA at 6 (stating, "[s]everal existing generation resources, totaling 1,792 MW, did submit a notice prior to April 15, 2012 of their intent to retire or mothball and these units were removed from the RNA Base Case.").

In fact, in a notice filed with the Commission on August 3, 2012, AGC notified the Commission that, at all times since the December 14 Notice, the Gowanus Barge 1 and 4 units had continued operation, had not changed their operating status or their NERC Generator Availability Data System (“GADS”) capability and it no longer proposed to mothball the Gowanus Barge 1 and 4 units as of that time.⁴

Next, by emphasizing certain findings in the 2012 RNA, Movants have ignored other critical facts that limit the significance of those findings. First, the 2012 RNA expressly recognized that the Gowanus 1&4 units had rescinded their notice of intent to mothball after the 2012 RNA base case assumptions were set. Second, the 2012 RNA also expressly stated that the base case for the CRP will reflect the fact that these units have, and will, continue to operate.⁵ Third, the 2012 RNA expressly recognized that it serves as the data point to start the CRP, the document that governs any steps associated with reliability planning on the New York system.⁶ Fourth, the 2012 RNA further expressly stated that the NYISO will monitor and evaluate any change to system conditions -- including specifically, any change in the status of mothballed facilities -- which the NYISO aptly identified as “key to the determinations that will be made in the CRP.”⁷ Importantly, the need preliminarily identified in the 2012 RNA is likely to be postponed at a minimum and may be eliminated given that the intention to mothball notice for

⁴ The AGC August 3, 2012, notice has been incorporated into the record by reference. *See* 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 PSL for the Construction, Operation and Maintenance of a High Voltage Direct Current Circuit from the Canadian Border to New York City*, “Ruling on Motions to Incorporate by Reference or Take Official Notice Filed by DEC, Jointly with Applicants and Staff; and, Separately, by IPPNY and Entergy,” p. 5 (“IPPNY’s request to have the AGC’s August 3, 2012 notice incorporated by reference is granted.”).

⁵ 2012 RNA at 24.

⁶ *Id.* at 8-9.

⁷ *Id.*

the Gowanus 1&4 units has been withdrawn. The same is equally true if other facilities that have submitted notices elect to rescind them.

Finally, Movants also ignore the fact that Attachment Y of the NYISO's Open Access Transmission Tariff specifies that any reliability need identified in the second five years of the ten years studied -- as is the case for the 2012 RNA -- only requires that the affected transmission owner submit a conceptual regulated backstop solution. Moreover, the proposed return of some or all of the generating facilities that submitted notices of intent to mothball can be submitted as a market response. Indeed, as page 39 of the draft 2012 RNA shows, the potential needs identified for 2020-2022 would be met simply by resuming operation of the mothballed units because the total capacity of the mothballed units (1,704 MW) is greater than the potential needs that were identified in those years.

As demonstrated above, the RNA's treatment of mothballed units as permanently retired is a conservative, worst-case scenario intended for planning purposes only. IPPNY previously has demonstrated in this proceeding that it was error for Ms. Frayer to make the same assumption in her analyses because it is unrealistic and thus renders her findings unreliable. Indeed, while the NYISO has chosen to assume that mothballed generators have in fact retired for the limited planning purposes of the RNA, study results based on this assumption cannot reasonably be relied upon to identify a need for Applicants' proposed project sufficient to satisfy the requirements of PSL Section 126.1(a) for the reasons set forth herein. Yet, that is exactly what Movants have attempted to do in their Motion.

Therefore, IPPNY requests that, if Your Honors grant the Motion, Your Honors reject the Movants' attempts to cherry-pick certain statements therein to the exclusion of the other relevant information cited herein.

Respectfully submitted,

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