

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.

RULING ON REQUESTS FOR EXTENSION OF SCHEDULE

(Issued November 2, 2010)

KEVIN J. CASUTTO and MICHELLE L. PHILLIPS,
Administrative Law Judges:

On October 1, 2010, we adopted a procedural schedule that established milestones for the balance of this proceeding. The schedule is based on a consensus schedule submitted on September 15, 2010 and discussed during the September 21, 2010 prehearing conference. This ruling addresses requests for extensions of this schedule, filed by the New York State Department of Environmental Conservation (DEC) and the New York State Department of Transportation (DOT).

The procedural schedule contains, in relevant part, the following milestones:

<u>Event</u>	<u>Date</u>
Filing of Applicant's supplemental direct testimony and exhibits providing proposed certificate conditions, EM&CP procedures and engineering details	October 19, 2010
Alternate Route Identification	October 28, 2010
Notice of Impending Settlement Negotiations (if deemed appropriate)	November 2, 2010
Site Visit Proposal	November 4, 2010
Formal service of alternatives on additional parties (if necessary)	November 10, 2010

Site Visit	November 15-19, 2010
Settlement Impasse	December 14, 2010
DPS Staff and Intervenor Direct Cases	December 23, 2010
Rebuttal Cases	January 20, 2011
Evidentiary Hearings	February 1 - 18, 2011
Initial Briefs	March 16, 2011
Reply Briefs	March 31, 2011

DEC Request

On October 22, 2010, DEC requested that the schedule be extended by 60 days, starting with the October 28 due date for the identification of alternative routes. DEC asserts that its staff needs more time to review and analyze the environmental impacts of the proposal, the draft Best Management Practices (BMP) submitted by the Applicant on October 19, 2010 and the Applicant's responses to DEC interrogatories on October 20, 2010. DEC contends that its review to date suggests that numerous, significant habitat areas and endangered species may be affected, thus requiring further research and additional consultation with involved federal agencies prior to identifying alternate routes. DEC adds that all Intervenor would benefit from a sixty-day extension.

We requested that any responses to the DEC request be filed by 3:30 p.m. on Wednesday October 27, 2010. Responses were submitted by the New York State Department of Public Service Staff (DPS Staff); the New York State Council of Trout Unlimited; the New York State Thruway Authority and Canal Corporation; IBEW-Local 97; the Department of Agriculture and Markets; Scenic Hudson, Inc. and Riverkeeper, Inc., filing

jointly (Scenic Hudson and Riverkeeper); and the Applicant.¹ The Applicant opposes DEC's request. Scenic Hudson and Riverkeeper support DEC's request. The other respondents do not object to DEC's request. Due to the limited time between the filing of DEC's request for an extension and the due date for identification of route alternatives, we issued an abbreviated e-mail ruling denying DEC's request. Our full ruling is provided herein.

Discussion

DEC has not alleged anything new, unanticipated or unforeseeable as bases for the scheduling changes that it seeks. In fact, at the prehearing conference, all parties in attendance, including DEC, were asked to detail any concerns they had with the schedule. Though DEC alluded to information request responses that it would receive in October,² its regional structure, and its coordination with the federal agencies and processes,³ all of which are reiterated in its instant pleading, it did not object to the schedule or request its modification.⁴

The Applicant opposes any change in schedule that would jeopardize (1) the Commission's ability to rule in this proceeding within twelve months of the August 11, 2010

¹ DOT also supported the DEC request but its pleading will be addressed, *infra*.

² Tr. 18.

³ Tr. 42-43.

⁴ Tr. 23, 37. Scenic Hudson and Riverkeeper's support for the DEC request is premised on asserting that the schedule is "aggressive" and that the timing of the award of Intervenor Funds and the Applicant's continued supplementation of its application make it difficult, if not impossible, for meaningful and thorough evaluation of the proposed project. However, like DEC, they haven't asserted anything that was unknown to them at the time of the prehearing conference nor did they object to the schedule at that conference. Tr. 35-40.

compliance date, herein, or (2) the Applicant's ability to meet the U.S. Department of Energy (DOE) loan guarantee deadline under the 2005 Energy Policy Act. However, the Applicant, along with DPS Staff, are amenable to a modification in schedule if (1) a decision can still be made within one year from the date the Application was deemed to comply with PSL §122 and (2) the previously-established dates for filing route alternatives, for site visits and filing a notice of impending settlement negotiations, if any, remain in place. DPS Staff asserts that the proposed modification in schedule could be effectuated if the schedule did not provide for the issuance of a recommended decision and the submission of briefs on exceptions and replies thereto.⁵

DPS Staff's suggestions for accommodating an extension of the schedule are rejected as premature. We would not look favorably upon nor would we likely adopt a schedule that eliminated the recommended decisions and briefs on exception absent the successful, negotiated resolution of at least some of the issues presented herein, issues that would otherwise be resolved as part of a fully-litigated proceeding. We remain hopeful that the parties will explore every available opportunity to resolve the issues to be addressed in this proceeding, in whole or in part. However, for now, and under these circumstances, which are materially similar to those existing when the schedule at issue was adopted, the request and suggestions for an extension of the schedule are denied.

⁵ If settlement discussions are noticed by the Applicant, DPS Staff adds that we should set November 30, 2010 as the date for the parties participating in settlement negotiations to (1) advise us on the progress of such discussions, (2) propose a date by which proposals for other alternative routes should be filed and (3) indicate whether the previously-adopted dates for the scheduled events subsequent to November should be modified.

DOT Request

On October 28, 2010, DOT requested active party status and supported the DEC request for an extension of the schedule. DOT states, in relevant part, that it had only recently learned of the application, and does not have a record of receiving the application. The Applicant should immediately provide DOT with a copy of the Application if it has not yet done so,⁶ and should indicate by close of business on November 4, 2010 whether it has any record of providing DOT with a copy of its Application. Furthermore, the Applicant must reach a mutually agreeable resolution with DOT regarding how best to remedy any harm that DOT has suffered if there has been an improper lack of service on DOT.

(SIGNED)

MICHELLE L. PHILLIPS

(SIGNED)

KEVIN J. CASUTTO

⁶ 16 NYCRR 85-2.10 (a)(9) lists the DOT as a State agency to be served with a copy of the application in the event any portion of the proposed facility is located within its geographical jurisdiction.