

Appendix C

Justification for Deviation Zone Excursions



Explanation for Proposed Deviation in Segment 16

On March 30, 2010, Champlain Hudson Power Express, Inc. (now CHPE LLC and CHPE Properties, Inc.)(collectively the "Certificate Holders") filed an Application for a Certificate of Environmental Compatibility and Public Need ("Certificate") with the New York State Public Service Commission ("PSC") pursuant to Article VII of the New York Public Service Law (PSL) to construct and operate the transmission project known as the Champlain Hudson Power Express Project (the "Facility") (PSC Case 10-T-0139). The PSC issued a Certificate for the Project on April 18, 2013, which adopted the terms of a Joint Proposal and associated Certificate Conditions.

The Facility route, as depicted on a series of maps included as Appendix B of the Joint Proposal and as amended, consists of a nominal centerline (the "Centerline") and an Allowed Deviation Zone ("ADZ"). Those portions of the ADZ that are ultimately determined to be actually affected by construction of the Facility, as well as certain areas outside the ADZ that are needed temporarily for site investigation, access, and construction, are referred to as the Construction Zone. When the Facility is completed, the Certificate Holders will have either control of—via fee, easement, or other appropriate interest—or rights granted by a governmental authority to use such authority's permanent right-of-way ("ROW"), and certain adjacent areas as defined in Certificate Condition #5, which states:

The portions of the Allowed Deviation Zone to be occupied by the Facility once construction is complete are referred to herein as the Facility ROW. The Certificate Holder shall also acquire and maintain the continuing right to enter onto and use certain additional lands immediately adjacent to the Facility ROW needed for repair and maintenance purposes, including preclusion of vegetative encroachment, on terms prohibiting the owners of such land from taking any action on that land that would interfere with such repair and maintenance activities.

The Certificate Conditions require that, should cable installation work occur outside of the ADZ, an explanation for the proposed deviations must be provided pursuant to Certificate Condition 157. Provided that certain criteria are met, Condition 157 of the Certificate confers discretion on Department of Public Service ("DPS") Staff to accept and review, without modification to the Certificate, Environmental Management & Construction Plan ("EM&CP") filings which include design deviations, including deviations regarding location of facilities or structures. Specifically, Condition 157 states that deviations "shall be allowed for appropriate environmental or engineering reasons without modification to [the] Certificate, except where a conflict with a specific provision of this Certificate would be created." The purpose of this memorandum is to demonstrate the appropriate environmental and engineering reasons for the proposed exceedances of the Deviation Zone in Segment 16, to demonstrate that net incremental environmental impacts from the exceedances are not material, and to show that the deviation creates no conflict with the other Certificate Conditions.

As part of the EM&CP filing for the first overland segment, the Certificate Holders are proposing minor work which will be outside of the ADZ associated with the Stony Point Transitional Horizontal Directional Drilling (HDD). This memorandum provides the required supporting materials necessary for DPS staff to review and approve this minor deviation as part of the EM&CP process.

Description of the Exceedance Area

The proposed Stony Point Transitional HDD is located in the Town of Stony Point, Rockland County. The proposed HDD begins approximately 700 feet northeast of the intersection of Battlefield Road and Park Road, and its length extends approximately 2400 feet.

Pursuant to Condition 138, each EM&CP filing must include a "detailed map or maps showing...the anticipated ultimate location and boundary of the Facility ROW". A detailed map showing the location and boundary of the Exceedance Area and ultimate Facility ROW is depicted in the EM&CP Plan and Profile drawings.



Justification

The Certificate Holders have endeavored to keep the Facility located within the currently approved ADZ and this exceedance is the only location where the Facility is outside the ADZ for Segment 16. However, certain physical limitations and obstacles have resulted in necessary shifts in the Facility location at this site as described herein and within the EM&CP. This change is necessary to avoid impacts to a steep slope within the 100-foot adjacent area of a State-mapped wetland; this exceedance will allow Certificate Holders to achieve a net reduction in potential environmental impacts to wetlands, terrestrial ecology, and steep slopes.

Land Control

CHPE, LLC has secured an option agreement with the owner of the parcel of land. This agreement will be converted into a permanent easement prior to construction. The exceedance does not require that rights to occupy or use lands be obtained from any additional landowners.

Environmental Impact

The anticipated ADZ exceedance constitutes a minor change; environmental impacts will be minimized, and the overall character of the Facility will not be changed. A detailed impact review and a summary of environmental considerations are provided below.

Agricultural Resources

Neither the original route nor the proposed route are located within agricultural lands, therefore, no change in impacts to agricultural resources will occur as a result of this exceedance.

Archaeological Resources

Neither the original route nor the proposed route are located within areas known to have archaeological resources, therefore, no change in impacts to archaeological resources will occur as a result of this exceedance.

Terrestrial Ecology

The original route and temporary workspace would have required the clearing of trees within the adjacent area of a State-mapped wetland located immediately to the south of the HDD. The proposed route and temporary workspace occupy an existing non-forested area and make use of an existing gravel access road leading to the workspace. For these reasons, the proposed Construction Zone exceedance results in an overall reduction in impacts to terrestrial ecology present at this location.

Threatened and Endangered Species

Neither the original route nor the proposed route are located within areas known to have threatened and endangered species, therefore, no change in impacts to threatened and endangered species will occur as a result of this exceedance.

Wetlands and Streams

Figure C-1 depicts the ADZ and the suggested deviation zone. The suggested deviation zone avoids impacts to a wetland located within the ADZ. Additionally, the suggested deviation zone avoids construction on steep slopes and disturbance, including tree clearing, within the 100-foot adjacent area of a State-mapped wetland. The suggested deviation zone takes advantage of an existing clearing and access road located northwest of the ADZ. A small 0.01 isolated emergent wetland (DJB-05) is located within the proposed workspace, however, impacts to this resource



will be temporary as the resource will be restored once construction is complete. Overall, the exceedance is anticipated to be less impactful to wetlands and wetland adjacent areas than the areas permitted in the ADZ.

Conclusion

On that basis, the Certificate Holders respectfully request that DPS Staff approve this exceedance from the ADZ with the Segment 16 EM&CP without modification to the Certificate.

