



## **Appendix C: Justification of Deviation Zone Excursions**

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## 1.0 Explanation for Proposed Deviation in EM&CP Segment 17

Champlain Hudson Power Express (now CHPE LLC and CHPE Properties, Inc.) (collectively the "Certificate Holders") holds a Certificate of Environmental Compatibility and Public Need ("Certificate") issued April 18, 2013 by 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). In the April 2013 Order approving the Certificate, and in amendments approved between August 2020 and February 2022, the PSC approved a Facility route, as depicted on a series of maps included as Appendix B of a Joint Proposal reached among the parties to case 10-T-0139 (and as amended). The Facility route consists of a nominal centerline (the "Centerline") and an Allowed Deviation Zone ("ADZ"). Those portions of the ADZ that are ultimately determined to be affected by construction of the Facility, as well as certain areas outside the ADZ that are needed temporarily for site investigation, access, and construction, as 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 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 permanent 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 EM&CP Segment 17, 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 Segment 17, the Certificate Holders are proposing minor areas of permanent cable installation which will be outside of the ADZ associated with the Putnam Station Transitional Horizontal Directional Drilling (HDD) and the Congers Transitional HDD. This memorandum provides the required supporting materials necessary for DPS staff to review and

approve these minor deviations as part of the EM&CP process under Condition 157.<sup>1</sup> There will be no exceedance of the ADZ associated with the Cementon HDD.

## **1.1 Putnam Station**

The proposed Putnam Station Transitional HDD is located in the hamlet of Putnam Station, within the Town of Putnam, Washington County, New York. The limits of disturbance (LOD) associated with HDD construction is located at the end of County Route 3. The HDD conduits will begin within the LOD and continue northeast passing beneath the Canadian Pacific Railway. The HDD will enter Lake Champlain roughly two thousand feet south of Mill Bay.

### **1.1.1 Description of Exceedance Area**

The Exceedance Area is located along the northeastern portion of the project area, where the permanent HDD cable route deviates slightly north of the ADZ, after crossing under the Canadian Pacific Railway. The northernmost cable begins to deviate just to the east of the Railway within the slope leading to Lake Champlain, while the southernmost cable begins to deviate within Lake Champlain. The northernmost cable is proposed approximately 300 feet north of the easternmost edge of the ADZ. 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 Facility ROW is depicted in the EM&CP Plan and Profile drawings (see Attachment A of the EM&CP).

### **1.1.2 Justification**

The Certificate Holders have endeavored to keep the Facility located within the currently approved ADZ. 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.

Original designs and drawings planned for a transition vault connection at 90 degrees, with the HDD conduits proceeding due east and the buried overland cables proceeding due south. This 90-degree connection at the transition vault is not technically feasible. Additionally, due to the proximity between the transition vault and the Canadian Pacific Railway, this HDD route would result in minimal vertical ground cover between the Railway and the HDD conduits, which is not desirable from the perspective of either Canadian Pacific or the Certificate Holders. Communication with Canadian Pacific confirmed that a deeper depth of cover was necessary to protect the integrity and safety of the railway.

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<sup>1</sup> In the alternative, to the extent that DPS Staff were to find that a proposed minor deviation requires amendment of the Certificate, CHPE requests that such amendment be considered by the Commission without delay, in conjunction with the approval of the Segment EM&CP. While CHPE believes that this memorandum demonstrates that the ADZ excursions proposed at the Putnam Station and Congers Transitional HDD locations satisfy the test for a minor deviation under Condition 157, ultimately these changes are critical to the construction and operation of this important New York State project, and both seasonal and logistical pressures require that the approval of these installations not be unduly delayed should an amendment process be required for this or any future segment EM&CP.

To avoid these undesirable complications, the HDD conduits have been re-routed to the northeast. This adjustment in HDD route alleviates the 90-degree bend at the transition vault. Additionally, this route creates additional vertical ground cover between the HDD conduits and the railway. Thus, this change is necessary to ensure adequate land-to-water connection at the transition vault and to avoid adverse impacts to the Canadian Pacific Railway.

### **1.1.3 Land Control**

The Certificate Holders have secured, or will secure, all property rights, licenses, or permits necessary to construct the Putnam Station Transitional HDD facility. The proposed HDD entry point for both conduits will begin on property owned by Delaware and Hudson Railway Company (Canadian Pacific Railway). The exceedance does not require that rights to occupy or use lands be obtained from any additional landowners.

### **1.1.4 Environmental Impacts**

The anticipated ADZ exceedance constitutes a minor change which does not materially increase environmental impacts from this Transitional HDD. Overall, 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.

#### **1.1.4.1 Agricultural Resources**

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

#### **1.1.4.2 Archaeological Resources**

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

#### **1.1.4.3 Terrestrial Ecology**

Both the original route and the proposed route are located in a previously disturbed area with minimal vegetation cover. Selective tree clearing or pruning may be required within the LOD to provide ample space for construction activities. The addition of the Exceedance Area does not change the quantity of tree or vegetation removal expected. Therefore, no change in impacts to terrestrial ecology will occur as a result of this exceedance.

#### **1.1.4.4 Threatened and Endangered Species**

No change in impacts to threatened and endangered species is expected to occur as a result of this exceedance. Within most of the Exceedance Area, both HDD conduits are located underground, and therefore will not impact any terrestrial species. Where the HDD conduits exit to Lake Champlain at the end of the Exceedance Area, lake habitat is anticipated to be similar to

that of the ADZ. Therefore, no change in impacts to threatened and endangered species is expected to occur as a result of this exceedance.

#### **1.1.4.5 Wetlands and Streams**

Neither the original route nor the proposed route is located within any wetlands or streams. No impacts to wetlands are currently anticipated. Therefore, no change in impacts to wetlands or streams will occur as a result of this exceedance.

### **1.2 Congers**

The proposed Congers HDD is located in the hamlet of Congers, within the Town of Clarkstown, Rockland County, New York. The LOD associated with the HDD construction is located within the limits of an existing auto salvage and repair facility east of Route 9W. The proposed HDD will begin within the LOD and then continue northeast entering the Hudson River at approximately River Mile 34.

#### **1.2.1 Description of Exceedance Area**

The Exceedance Area is located in a small area at the northeast corner of the LOD, where the southern HDD entry pit is proposed. In this area, the HDD conduits have been extended further to the west and south, slightly outside of the ADZ. The southernmost cable is a maximum of 10 feet south of the ADZ. 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 Facility ROW is depicted in the EM&CP Plan and Profile drawings (see Attachment A of the EM&CP).

#### **1.2.2 Justification**

The Certificate Holders have endeavored to keep the Facility located within the currently approved ADZ. 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.

Due to the proposed location of the transition vault, the HDD conduits have been moved slightly to the west and south. This minor modification will enable proper tie-in at the transition vault. This change will also ensure that all construction activities and permanent structures remain within the LOD and within the parcel owned by Isabella Rose Reality, LLC, the landowner with whom CHPE has an agreement for this installation.

#### **1.2.3 Land Control**

The Certificate Holders have secured, or will secure, all property rights, licenses, or permits necessary to construct the Congers Transitional HDD facility. The proposed HDD entry point for both conduits will begin on property owned by Isabella Rose Reality, LLC. The exceedance does not require that rights to occupy or use lands be obtained from any additional landowners. The Exceedance Area and LOD are located entirely within the temporary easement obtained by the Certificate Holders.

#### **1.2.4 Environmental Impact**

The anticipated ADZ exceedance constitutes a minor change which does not materially increase environmental impacts from this Transitional HDD. Overall, 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.

##### **1.2.4.1 Agricultural Resources**

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

##### **1.2.4.2 Archaeological Resources**

Neither the original route nor the proposed route is located within areas known to have archaeological resources, as confirmed by the New York State Office of Parks, Recreation, and Historic Preservation (OPRHP) on October 14, 2022. Therefore, no change in impacts to archaeological resources will occur as a result of this exceedance.

##### **1.2.4.3 Terrestrial Ecology**

The Congers Transitional HDD entry point is located on a parcel of property that is currently paved. The Exceedance Area is located entirely within an area of paved ground. No additional vegetation clearing is required to facilitate this exceedance. Therefore, no change in impacts to terrestrial ecology is expected to occur as a result of this exceedance.

##### **1.2.4.4 Threatened and Endangered Species**

No change in impacts to threatened and endangered species is expected to occur as a result of this exceedance. Threatened and endangered species are unlikely to occupy the Exceedance Area, as the Exceedance Area is located entirely within an area of paved ground on a parcel currently used as an auto salvage and repair facility, in a developed area. Therefore, adverse impacts to threatened and endangered species are not anticipated to occur as a result of this exceedance.

##### **1.2.4.5 Wetlands and Streams**

Neither the original route nor the proposed route is located within any wetlands or streams. No impacts to wetlands are currently anticipated. The Exceedance Area is located entirely within an area of paved ground. Therefore, no change in impacts to wetlands or streams will occur as a result of this exceedance.

### **1.3 Conclusion**

Based on the justification described above, the Certificate Holders respectfully request that DPS Staff approve the exceedance from the ADZ with the Segment 17 EM&CP without modification to the Certificate.