

APPENDIX E
CASE 10-T-0139
JUSTIFICATION FOR DEVIATION ZONE EXCURSIONS
ASSOCIATED WITH SEGMENT 9

1.0 INTRODUCTION

Champlain Hudson Power Express (now CHPE LLC and CHPE Properties, Inc.) (collectively the "Certificate Holders" or "CHPE") hold 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, 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 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, are referred to hereafter as the "Construction Zone." When the Facility is completed, the Certificate Holders will have land control through fee, easement, or other appropriate interest or through rights granted to use permanent rights-of-way (ROW), and certain adjacent areas as defined in Certificate Condition S8-5, 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.

For rights concerning property to be used for permanent facility components or ROW, the Certificate Holders have obtained initial title information, where available and appropriate, and will continue to develop the required title reports in accordance with CC 143.

The Certificate Conditions state that construction of the overland portions of the Facility outside of the ADZ shall be allowed for appropriate environmental or engineering reasons, except where a conflict with other Certificate Conditions would be created (CC 156). The Certificate Conditions require that, should conduit installation work be proposed outside of the ADZ, an explanation for the proposed deviations must be provided pursuant to CC 157. Provided those certain criteria are met, Condition 157 of the Certificate confers discretion on the Public Service Commission to approve, the Environmental Management Construction Plan (EM&CP) filings which include "deviations from the design depth, height, and 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."

As part of the EM&CP filing for Segment 9, the Certificate Holders are proposing minor shifts in the proposed conduit outside of the ADZ at two unique locations along the Project Corridor (shown in Attachment 1 – Segment 9 Deviation Zone Excursions Locations figure set). This memorandum provides the required supporting materials necessary for DPS staff to review and approve these minor excursions from the ADZ as part of the EM&CP process. Specifically, this includes:

1. A detailed description of and justification for each excursion from the ADZ based upon appropriate environmental and engineering reasons, including a demonstration that the exceedance is limited to the minimum extent necessary.
2. Confirmation that Certificate Holders either (1) have obtained or will obtain rights to occupy and use the land(s) associated with any such ADZ excursions and the consent of any and all landowners owning any part of the excursion area to the occupancy and use of their land(s) for Facility purposes and are in the process of recording those rights with the appropriate County office, where required, and/or (2) have provided notice to any and all landowners owning any part of the ADZ Excursions with a written offer to such landowner for such rights to occupy and use their land(s) for Project purposes as would be needed for Certificate Holders under Section 11 of the Transportation Corporations Law.
3. A demonstration that any net incremental environmental impacts arising as a result of the construction, operation, and maintenance of the Facility at the excursion areas are not material.
4. A demonstration that installation of the Facility conduits at the ADZ Excursion Areas will not substantially change the overall character of the Facility.

2.0 EXPLANATION FOR PROPOSED EXCURSIONS FROM THE DEVIATION ZONE IN SEGMENT 9

The ADZ in Segment 9 is located almost entirely within the public road and CSX Rail ROW. The Certificate Holders have endeavored to keep the Facility located within the currently approved ADZ; however, adherence to certain CSX requirements and avoiding certain physical limitations and/or obstacles have resulted in necessary shifts in the Facility location. Excursions from the ADZ have been identified at two unique locations along the Segment 9 Project Corridor, within the 5.31-mile segment. Table 1-1 below identifies each ADZ Excursion, their location on the Plan and Profile Drawings (Appendix C of the EM&CP), a justification for the excursion, and if there is any change in environmental impact. It is worth noting that some of these excursions consists mainly of construction via trenchless technologies (e.g., horizontal directional drill [HDD]) such that additional earth disturbance or adverse impacts can be avoided. Overall, these changes do not substantially change the overall character of the Facility or the proposed route, which still generally runs parallel to the CSX railroad line as approved in the Certificated Route.

Table 1-1. Deviation Zone Excursions in Segment 9

Deviation Zone Excursion	Parcel	Sheet	Approximate (see drawings for more detail)		Justification for Revision	Environmental Impact
			Stationing Start	Stationing End		
S9-1	NA – within CSX ROW	C-101	51000+00	51003+00	Avoiding road embankment and wetland	See below
S9-2	132.00-2-26	C-114	51197+00	51200+00	Additional space required for splice location #191	See below

2.1 EXCURSION S9-1

1. Description of the Excursion

Segment 9 Excursion 1 (Excursion S9-1) is located parallel to the Indian Fields Road crossing (approximately STA 5100 to 51003 on Sheet C-101 of the Plan and Profile Drawings (Appendix C of the EM&CP); see also attached figure set).

2. Justification

At this location, there is a steep embankment beginning at the edge of the road that limits construction, access and trench installation. In order to avoid this steep slope, and a delineated wetland at the base of the embankment, the alignment will be placed outside of, and parallel to, the ADZ for a total of approximately 300 linear feet. This ADZ Excursion request is grounded in both environmental and engineering reasons and is the minimum necessary to feasibly achieve the installation without impacting a wetland and steep slope.

3. Environmental Impact

The anticipated ADZ exceedance constitutes a minor change, as it is approximately 28 feet perpendicular to the edge of the ADZ at its furthest point and will be located primarily within a previously disturbed roadside location; 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 – None present within the vicinity of the excursion based on desktop aerial imagery and field confirmation.

Cultural Resources – Hartgen Associates performed a review of the Segment 9 alignment and identified areas where the Facility may impact cultural resources (see Table 11-1 of the EM&CP and

Appendix O – Cultural Resources Management Plan). Excursion S9-1 is not in the vicinity of any identified archaeologic or historic resources and therefore does not result in any additional impact.

Terrestrial Ecology – Excursion S9-1 occurs along a landscaped edge of a public road ROW and encroaches slightly into adjacent private properties. Clearing will be selective and only remove what is required within the Limit of Work (LOW) for the construction of the Facility. The area will be restored as described in Section 14 of the EM&CP and any landscaping will be replaced as required by DPS.

Threatened and Endangered Species – The only RTE species within the vicinity of Excursion S9-1 as identified through consultation with the DEC or USFWS is northern long-eared bat. Any tree clearing required for the construction of the Project will occur per the approved methods in the EM&CP (e.g., during the winter clearing window, or pending additional agency coordination) in order to avoid impacts.

Wetlands and Streams – There is one delineated wetland within the vicinity of this excursion – wetland B. This excursion avoids impacting the wetland.

2.2 EXCURSION S9-2

1. Description of the Excursion

Excursion S9-2 is located within the Town of New Scotland beginning at the edge of the CSX ROW (approximately STA 51197 to 51200 on Sheet C-114 of the Plan and Profile Drawings (Appendix C of the EM&CP); see also attached figure set).

2. Justification

Splice vault locations are required at a certain interval (at least every 3,200 feet, approximately) to correspond to the length of cable on each reel. At Excursion S9-2 additional space is required for Splice 191. The splice work area must be placed perpendicular to the alignment and therefore there is not enough space for the splice work area between the tracks and the alignment at this location. Due to this spatial requirement, the alignment leading up to and out of the splice, and the splice itself will be placed outside and parallel to the ADZ. for approximately 83 linear feet. This ADZ Excursion request is grounded in engineering reasons and is the minimum necessary to feasibly achieve the installation.

3. Environmental Impact

The anticipated ADZ exceedance constitutes a minor change as it is 4 feet perpendicular to the ADZ at its furthest point; 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 – none present within the LOW of the excursion based on desktop aerial imagery and field confirmation.

Cultural Resources – Hartgen Associates performed a review of the Segment 9 alignment and identified areas where the Facility may impact cultural resources (see Table 11-1 of the EM&CP and Appendix O – Cultural Resources Management Plan). Hartgen Associates has recommended testing or monitoring in this area to avoid impacts to cultural resources.

Terrestrial Ecology – Excursion S9-2 occurs along a vegetated forest stand on private property and along the CSX ROW. Tree clearing expected for this work outside the ADZ is anticipated to be similar as what would be required should the placement of the conduit be maintained in the ADZ. Clearing will be selective and only remove what is required for the construction of the Facility and will be performed as described in the EM&CP. The area will be restored as described in Section 14 of the EM&CP.

Threatened and Endangered Species – The only RTE species within the vicinity of Excursion S9-2 as identified through consultation with the DEC or USFWS is Indiana bat. Any tree clearing required for the construction of the Project will occur per the approved methods in the EM&CP (e.g., during the winter clearing window, or pending additional agency coordination) in order to avoid impacts.

Wetlands and Streams – This excursion is within wetland FA. These wetlands extend into the ADZ and would be impacted either way. This wetland was delineated within the Project Corridor and extends outside of the ADZ. An equal amount of wetland would be impacted by the permanent placement of infrastructure even if the conduit remained within the ADZ. The area will be restored as described in Section 14 of the EM&CP. Therefore, the proposed ADZ Excursion does not significantly increase impacts to wetlands or streams as compared with the approved ADZ.

3.0 CONCLUSION

The adjusted route at the two locations in Segment 9 presented above do not significantly increase adverse environmental impacts associated with the Project or this particularly segment, and one proposed excursion is designed to avoid or decrease impacts to wetlands, while the other will otherwise avoid or reduce potential conflicts with railroad infrastructure and operations. Impacts associated with this work have been minimized and mitigated and can be addressed by the Certificate Conditions already approved by the Commission for the Facility. The deviation requested is necessary for appropriate engineering and environmental reasons and does not conflict with the other Certificate Conditions. The Certificate Holders have kept the proposed excursions to the minimum area necessary to ensure construction of the Facility is feasible, while attempting to reduce impacts and stay within the approved ADZ to the extent practicable.

On that basis, the Certificate Holders respectfully request that DPS Staff approve the excursions from the ADZ with the Segment 9 EM&CP without modification to the Certificate.

In the alternative, should DPS Staff determine that a Certificate modification is required to effectuate any of these changes to the ADZ, Certificate Holders respectfully request that the PSC consider this submission in lieu of a separate petition for a modification, given that this EM&CP submission materially adheres to the same general procedural and substantive requirements which would otherwise be required for such a modification (such as the dissemination of legal notices to affected landowners, notice to the public and host communities, and a robust justification for the changes requested). The ADZ changes will not result in any material increase in environmental impacts from the Facility—and, in fact, are intended to decrease environmental impacts at certain locations—and do not substantially change the location of the Facility for the reasons described in this memorandum. While the Certificate Holders do not believe that the adjustments outline in this memorandum constitute an amendment to the Certificate, should an amendment be necessary, Certificate Holders submit that a hearing is not required or warranted in accordance with PSL Section 123(2).

Attachment 1

Figure Set

CHPE EM&CP

Albany County, New York

Deviation Zone Analysis

- Mile Post
- Segment 9 Alignment Deviations
- Segment 9 Alignment
- Delineated Wetlands
- ▨ ESA 9
- ▭ Deviation Zone



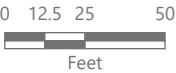
Prepared December 16, 2022
Basemap: Esri "World Imagery" map service

CHPE EM&CP

Albany County, New York

Deviation Zone Analysis

- Mile Post
- Segment 9 Alignment Deviations
- Segment 9 Alignment
- ▨ Delineated Wetlands
- ▨ Agricultural Land
- ▨ ESA 4
- ▭ Deviation Zone



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Basemap: Esri "World Imagery" map service

