

## **APPENDIX E**

### **CASE 10-T-0139**

# **Justification for Deviation Zone Excursions Associated with Segments 13, 14, and 15 (Package 8) of the Champlain Hudson Power Express**

## 1.0 Introduction

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 (the "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 (CCs).

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)s, 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."*

For all rights concerning property comprising the Facility ROW, the Construction Zone, off-ROW-access, storage or staging areas, or similar areas, the Certificate Holders have obtained initial title information and will continue to develop the required title reports in accordance with CC 143. Details of Facility ownership and easements are outlined in Table 4-4 of the EM&CP.

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). Further, CC 157 requires that an explanation must be provided should cable installation work occur outside of the ADZ. Provided that certain criteria are met, CC 157 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, CC 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 Segments 13, 14, and 15, the Certificate Holders are proposing minor work outside of the ADZ along the Segments 13, 14, and 15 Project Corridor (shown in Attachment 1 – Segments 13, 14, and 15 Deviation Zone Excursions 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 excursion is limited to the minimum extent necessary.
2. Confirmation that Certificate Holders have obtained 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 that the Certificate Holders are in the process of recording those rights with the appropriate County office.
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 are not material.
4. A demonstration that installation of the Facility cables at the excursion will not substantially change the location of Facility components or structures and does not otherwise conflict with the other Certificate Conditions.

## **2.0 Explanation for Proposed Excursions from the Deviation Zone in Segment 13, 14, and 15**

The Certificate Holders have conducted extensive consultation with New York City, the owners of Randall’s Island, and associated stakeholders over an approximately four-year period. On January 26, 2021, the PSC approved an amendment of the CHPE Certificate to include routing through Randall’s Island. The City of New York submitted a letter of support for this routing (Appendix E to Amendment 3 Petition; filed October 9, 2020 DMM Item 805).

As the Certificate Holders have worked to finalize design for the routing through Randall’s Island, it became evident that various technical challenges the location of the East River crossing HDD work area require relocating that area west of the area identified in the 2021 amendment. CHPE reinitiated conversations with New York City (NYC) on this design challenge and has provided several briefings, forums for questions and feedback and conducted several field visits in late 2022 and early 2023. Based on these meetings, NYC has provided initial feedback that the relocation of the HDD to the currently proposed location was acceptable subject to certain caveats. A copy of the presentation provided to NYC is included in Appendix A to the EM&CP. CHPE believes that

the current design appropriately balances the many competing interests involved at this location, including minimization and avoidance of adverse impacts to recreational resources, as well as the technical challenges of East River HDD crossing. Information provided by these agencies and stakeholder groups have been instrumental in the revised HDD design, and minor route adjustments on Randall's Island. Consultations will continue with these Agencies as appropriate, to ensure statutory and regulatory requirements are met.

The ADZ in Segments 13, 14, and 15 is located predominately within existing public and private ROWs in Bronx and Queens Counties, New York. 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. Excursions from the ADZ have been identified at several unique locations along the Segments 13, 14, and 15 Project Corridor. Table 1 identifies each 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 (see also Table 1-3 of the EM&CP).

**Table 1. Excursions from the Deviation Zone in Segment 13, 14, and 15**

| Excursion # | Parcel ID             | Appendix C Sheet | Location (Approximate – see Appendix C for Details) |               |             | Justification for Revision  | Environmental Impact Review |
|-------------|-----------------------|------------------|---|---------------|-------------|---|-----------------------------|
|             |                       |                  | Mile Point  | Station Start | Station End |   |                             |
| S13-1       | Block: 2260 Lot: 62   | C-101            | 330.35/0.25   | 80001+00      | 80002+00    | Avoid utilities   | None                        |
| S13-2       | Block: 2260 Lot: 62   | C-101            | 0.35  | 80005+00      | 80008+00    | Avoid existing drainage feature and allow for extra room for access road      | None                        |
| S13-3       | Block: 2260 Lot: 62   | C-101            | 0.4   | 80009+00      | 80011+00    | Avoid existing drainage feature and allow for extra room for Splice Vault 263 | None                        |
| S13-4       | Block: 2260 Lot: 62   | C-101, C-102     | 0.5   | 80012+00      | 80014+00    | Angle of HDD to avoid utilities   | None                        |
| S13-5       | Block: 1819, Lot: 203 | C-103            | 0.8   | 80032+00      | 80034+50    | Extra space needed for Splice Vault 264 and crane pad and to avoid utilities  | None                        |
| S13-6       | Block: 1819, Lot: 203 | C-103            | 0.9   | 80035+00      | 80036+00    | Avoid utilities within pathway  | None                        |

| Excursion # | Parcel ID                                   | Appendix C Sheet | Location (Approximate – see Appendix C for Details) |               |             | Justification for Revision   | Environmental Impact Review                     |
|-------------|---|------------------|---|---------------|-------------|--|---|
|             |   |                  | Mile Point  | Station Start | Station End |  |   |
| S13-7       | Block: 1819, Lot: 203                       | C-103            | 0.9   | 80036+50      | 80037+00    | Avoid utilities within pathway   | None  |
| S14-1       | Block: 1819, Lot: 203; Block: 850, Lot: 300 | C-104 - C-108    | 1.15 – 2.1/322.1                                    | 80048+00      | 80096+00    | HDD 135 workspace and angle to avoid ball field and utilities along pedestrian pathway | Tidal wetland; tree clearing; Recreational area |

All excursions are located immediately adjacent to the ADZ and will be required in order to provide for additional workspace for splice vaults and horizontal directional drill (HDD) installations, avoid existing subsurface utilities, or required by New York City Parks to avoid recreational impacts in Randall's Island Park. Each excursion has been minimized to the extent practicable thus avoiding substantial changes in Facility location.

Segment 13 is largely located within industrial and recreational setting, located in a ConEdison facility and adjacent to a CSXT rail yard before crossing the Bronx Kill to Randall's Island Park. Segment 14 is comprised of one HDD to cross the East River, and Segment 15 is sited in another ConEdison property surrounded by other industrial uses in the Astoria power complex. Based on a review of existing land uses, aerial imagery, and confirmation by site reconnaissance, no agricultural lands, freshwater wetlands or streams, or threatened and endangered species or their habitat occur in the ADZ or the current alignment of Segments 13, 14, and 15 (see Sections 7.2 and 9.0 of the EM&CP). Additionally, Hartgen Associates performed a cultural resources review of the Project alignment and identified no direct impacts to cultural resources in the immediate vicinity of Segments 13, 14, and 15 and no protection measures have been recommended (see Section 11 of the EM&CP). Therefore, the identified excursions will not result in any changes to the Facility's impacts on agricultural lands, cultural resources, freshwater wetland and streams, or threatened and endangered species.

As noted in Table 1, the Excursions #S13-1 through #S13-7 have been determined to have no additional environmental impact due to the minor nature of the shift, lack of sensitive resources present, and siting of the Facility in previously disturbed areas.

Tidal wetlands and recreational resources are present along the Segment 13 and Segment 14 Project Corridor (refer to Sections 7.2, and 9 of the EM&CP for more detail on these resources). These resources have been reviewed for additional environmental impacts resulting from Excursions #S14-1 and supporting information is provided to assist DPS staff in their review and approval of these minor excursions from the ADZ, as described in the following sections.

## 2.1 Excursion #S14-1

### 1. Description of the Excursion

Excursion #S14-1 is located just north of the pedestrian walkway in Randall's Island Park, New York beginning near Station 80048+00 (see Figure 1 and Profile Drawings [Sheets C-104 through C-108, Appendix C of the EM&CP]). This excursion includes the HDD crossing of the East River which is not anticipated to require additional authorization from DPS staff as the ADZ in this area is generally limited to the proposed HDD entry and exit locations on land; however, the following discussions include a review of the environmental impact of the HDD entry pit location which does occur outside of the ADZ.

### 2. Justification

The cable alignment was shifted immediately outside of the ADZ to avoid existing subsurface utilities within the pedestrian walkway and to avoid impacts to the adjacent Randall's Island baseball field, as requested by NYC Parks.

### 3. Environmental Impact

The proposed excursion constitutes a minor change including approximately 0.9 mile in length, the majority of which is comprised by the HDD under the East River and begins immediately adjacent to the ADZ. 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.

Recreational Land – Excursion #S14-1 is located within Randall's Island Park. The ADZ was comprised of the pedestrian pathway that runs adjacent to the ball field; however, as noted above, the alignment was shifted to avoid impacts to the adjacent ball field as requested by NYC Parks. The shifted alignment will now avoid potential impacts to the ball field and contain disturbance north of the pedestrian walkway. A temporary chain link fence with visual barrier will be constructed to separate the work zone and exclude pedestrian access. The area will be able to be used for its current purpose after construction and restoration of the area is complete. This minor temporary impact is necessary due to the justification described above.

Tidal wetlands and waterbodies – Crossing of the East River will be accomplished through HDD thereby avoiding impacts to the river; however, the HDD workspace will occur in the tidal wetland area along the East River shoreline in Randall's Island Park. Impacts to the tidal wetland would include approximately 0.50 acre of temporary disturbance during construction as well as selective tree and vegetation clearing.

The anticipated tidal wetland impacts during construction at the Randall's Island HDD location have been discussed extensively with the various regulatory agencies, including the City of New York, US Army Corps of Engineers, NY Department of State, NYSDEC and NYSDPS. Information provided by these agencies has been instrumental in the current HDD design at Excursion #S14-1, assessment of potential impacts to (as well as avoidance,

minimization, and mitigation strategies) the tidal wetland, as well as other minor route adjustments on Randall's Island. Consultations will continue with these agencies as appropriate, to ensure statutory and regulatory requirements are met.

The Certificate Holders have obtained a wetland permit from, and are continuing to coordinate with, USACE to ensure that all Project construction will be in compliance with the requirements of Permit NAN-2009-01089-M4 and all approved permit modifications. The disturbed area will be restored as described in Section 14 of the EM&CP. In addition, an Inadvertent Release and Contingency Plan (Appendix J to the EM&CP) has been prepared to respond to any frac-outs of drilling fluids and a SPCC Plan that outlines procedures and best management practices to control the potential for the occurrence of spills is included in Appendix K. Wetland mitigation, where necessary, will be conducted in accordance with the wetland mitigation plan developed in consultation with USACE and NYSDEC.

### **3.0 Conclusion**

The adjusted route at the excursion areas presented above do not significantly increase adverse environmental impacts. In fact, the locations of these excursions will help to minimize potential impacts to existing subsurface utilities and/or recreational uses that would arise if the alignment remained inside the ADZ. Impacts associated with this work have been minimized and mitigated and can be addressed by the Certificate Conditions and Best Management Practices already approved by the Commission for the Facility. The requested excursions from the ADZ are necessary for appropriate engineering and environmental reasons and do not conflict with the other Certificate Conditions.

On that basis, the Certificate Holders respectfully request that DPS Staff approve these excursions from the ADZ within the Segments 13, 14, and 15 EM&CP without modification to the Certificate.

In the alternative, should DPS Staff determine that a Certificate amendment is required to effectuate any of these changes to the ADZ, the Certificate Holders respectfully request that the PSC consider this submission in lieu of a separate petition for an amendment, given that this EM&CP submission materially adheres to the same general procedural and substantive requirements which would otherwise be required for such an amendment (such as the dissemination of legal notices to affected landowners, notices 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, the Certificate Holders submit that a hearing is not required or warranted in accordance with the PSL Section 123(2).

## **FIGURES**

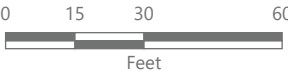


CHPE EM&CP

New York County, New York

Appendix E

- Mile Post
- Segment 13-15 Trench Excursion
- Segment 13-15 Trench Alignment
- ▭ NOAA Essential Fisheries Habitat
- ▭ Deviation Zone



Prepared July 25, 2023  
Basemap: NYSDOP "2020" orthoimagery map service

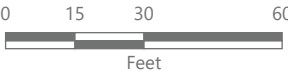


CHPE EM&CP

New York County, New York

Appendix E

- Mile Post
- Segment 13-15 Trench Excursion
- Segment 13-15 Trench Alignment
- ▭ NOAA Essential Fisheries Habitat
- ▭ Deviation Zone



Prepared July 25, 2023  
Basemap: NYSDOP "2020" orthoimagery map service

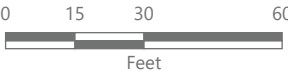


CHPE EM&CP

New York County, New York

Appendix E

- Mile Post
- Segment 13-15 Trench Excursion
- Segment 13-15 Trench Alignment
- - Segment 13-15 HDD within Deviation Zone
- - Segment 13-15 HDD Deviation Zone Excursion
- ▨ NOAA Essential Fisheries Habitat
- Park
- ▭ Deviation Zone



Prepared July 25, 2023  
Basemap: NYSDOP "2020" orthoimagery map service

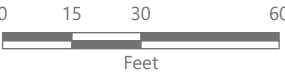


CHPE EM&CP

New York County, New York

Appendix E

- Mile Post
- Segment 13-15 Trench Alignment
- - Segment 13-15 HDD within Deviation Zone
- - Segment 13-15 HDD Deviation Zone Excursion
- ▭ NOAA Essential Fisheries Habitat
- ▭ Park
- ▭ Deviation Zone






Prepared July 25, 2023  
Basemap: NYSDOP "2020" orthoimagery map service

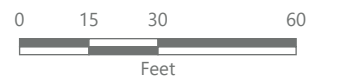


## CHPE EM&amp;CP

New York County, New York

## Appendix E

- Mile Post
- Segment 13-15 Trench Excursion
- Segment 13-15 Trench Alignment
- - Segment 13-15 HDD within Deviation Zone
-  NOAA Essential Fisheries Habitat
-  Park
-  Deviation Zone



Prepared July 25, 2023  
Basemap: NYSDOP "2020" orthoimagery map service

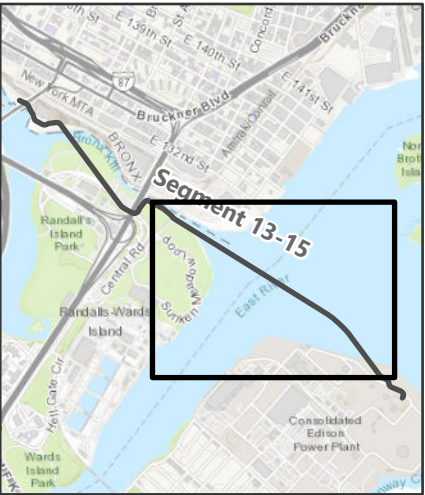


CHPE EM&CP

New York County, New York

Appendix E

- Mile Post
- Segment 13-15 Trench Excursion
- Segment 13-15 Trench Alignment
- - Segment 13-15 HDD within Deviation Zone
- - Segment 13-15 HDD Deviation Zone Excursion
- ▨ Delineated Wetlands
- ▨ ESA 10
- ▨ NOAA Essential Fisheries Habitat
- ▨ Park
- ▭ Deviation Zone



Prepared July 25, 2023  
Basemap: NYSDOP "2020" orthoimagery map service