



## Department of Energy

Washington, DC 20585

December 4, 2020

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Subject: Re-initiation of Section 7 Consultation for the Champlain Hudson Power Express Project  
Docket No. DOE/EIS-0447-SA-01  
Docket No. PP-481-1

Dear Mr. Sullivan:

On October 6, 2014, the U.S. Department of Energy (DOE) issued Presidential Permit No. PP-362 authorizing Champlain Hudson Power Express, Inc. (CHPEI) to construct, operate, maintain, and connect the Champlain Hudson Power Express Project (Project). As an administrative matter, please note that on April 6, 2020, CHPEI filed an application for transfer of the permit from CHPEI to its affiliate Champlain Hudson Power Express, LLC (CHPE, LLC or the Applicant), and the Presidential Permit docket number was changed to PP-481.<sup>1</sup>

The Project as permitted by DOE, the U.S. Army Corps of Engineers (USACE) and the New York State Public Service Commission (NYSPSC) comprises a 1,000-megawatt high-voltage direct current (HVDC) transmission system extending approximately 333 miles from the United States' (U.S.) border with Canada to a converter station to be constructed in Astoria, Queens, New York; a 3-mile long high-voltage alternating current transmission system extending from the proposed converter station to an existing substation in Astoria; and ancillary facilities such as temporary work areas, contractor yards, laydown areas, and access roads.

On September 25, 2020, CHPE submitted an application to DOE to amend their existing Presidential Permit PP-481. A copy of DOE's "Notice of Application to Amend Presidential Permit; CHPE, LLC" (85 FR 62721; October 5, 2020) is provided as Attachment 1.

The Applicant's Presidential Permit amendment application,<sup>2</sup> provided as Attachment 2, describes eight proposed route modifications (Putnam Station, Fort Ann, Schenectady, Selkirk Rail Yard, Catskill Creek, Rockland County, Harlem River Yard, and Astoria Rainey Cable) and a proposed relocation of the site of the converter station. These proposed modifications are succinctly described, along with associated maps, on pages 5 through 24 of Attachment 2.

The applicant has also identified a modified construction method along overland sections of the route that involves installing the cables within a conduit within the established trench. The

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<sup>1</sup> PP-481 is available here: <https://www.energy.gov/oe/services/electricity-policy-coordination-and-implementation/international-electricity-regulation-3>

<sup>2</sup> The Presidential Permit Amendment Application is available here: <https://www.energy.gov/oe/services/electricity-policy-coordination-and-implementation/international-electricity-regulation/pending-applications>

proposed width and depths of the trenches would remain unchanged from those associated with the previous direct burial technique. Construction of the Project would entail installation of buried transmission cables along waterways and within the rights-of-way of existing transportation infrastructure, including railroads and roadways located within the State of New York. This approach would minimize the visual and landscape impacts associated with traditional overhead transmission lines, while simultaneously providing the additional capacity required to meet the increasing clean energy demands of the greater New York City metropolitan area.

DOE is conducting a Supplement Analysis, which is a document that DOE prepares in accordance with DOE National Environmental Policy Act (NEPA) regulations (10 CFR 1021.314(c)) to determine whether an existing environmental impact statement (EIS) should be supplemented; a new EIS should be prepared; or no new NEPA documentation is required. The purpose of this letter is to request re-initiation of the Endangered Species Act (ESA) Section 7 consultation process for the CHPE Project to address these modifications.

### Previous Consultation

Documentation of the previous ESA Section 7 consultation process is available on DOE's CHPE EIS Document Library at: <http://chpexpresseis.org/library.php>.

Acting as lead agency under NEPA, DOE prepared the Final EIS for the Champlain Hudson Power Express Transmission Line Project (DOE/EIS-0447) that analyzed the potential environmental impacts associated with the Project. All practicable means to avoid, minimize, and mitigate adverse impacts from the Project are described in DOE/EIS-0047, including those resulting from the cooperation of and consultations with USACE, the U.S. Fish and Wildlife Service (USFWS), and the National Oceanic and Atmospheric Administration Fisheries Service (NOAA Fisheries).<sup>3</sup>

In accordance with the requirements of Section 7 of the ESA, DOE consulted with the USFWS and NOAA Fisheries regarding the Project's potential impacts to threatened and endangered species. DOE issued a Biological Assessment (BA) in July 2014. See Attachment 3.

The USFWS concurred with DOE's BA determination on September 10, 2014. This letter stated that the Project "may affect, but is not likely to adversely affect" the Indiana bat (*Myotis sodalis*), the Karner blue butterfly (*Lycaeides melissa samuelis*), or the northern long-eared bat (*Myotis septentrionalis*). See Attachment 4.

NOAA Fisheries concurred with the DOE's BA determination on September 18, 2014, and their concurrence letter included an extensive review of the BA's findings. Specifically, the BA and concurrence letter described the Project's construction methods, including the use of the jet plow, horizontal direction drill (HDD) technology, and concrete mattresses, and its operational procedures. These documents also considered Applicant's proposed mitigation measures and best management practices, and the potential impacts to the species (e.g. vessel strikes, accidental spills) and their habitat (e.g. magnetic fields, thermal increases, turbidity, and mobilization of contaminated sediment). See Attachment 5.

DOE also consulted with NOAA Fisheries pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Fish and Wildlife Coordination Act (FWCA).

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<sup>3</sup> For the purposes of this document, "NOAA Fisheries" also represents the predecessor to the NOAA Fisheries, the National Marine Fisheries Service (NMFS).

In June 2014, DOE issued an essential fish habitat (EFH) assessment for the Project. NOAA Fisheries responded to DOE on August 19, 2014 with a letter offering recommendations regarding measures the Project should undertake to mitigate impacts to EFH. See Attachment 6.

### Impact Minimization and Conservation Measures

The Applicant's initial application for a Presidential permit detailed a number of industry-accepted best management practices (BMPs) that would be undertaken to avoid and reduce environmental impacts during construction and operation of the proposed Project. The Applicant-proposed measures were taken into account in the environmental analyses conducted for the DOE FEIS and the BA. A listing of specific BMPs considered as part of the Section 7 consultation are provided in Section 2.6 of the BA.

### Terrestrial Species

The BA identified nine terrestrial species that are federally listed, or are proposed for Federal listing, that have previously been identified in the vicinity of the proposed Project area at the time. Of the nine terrestrial species, the BA concluded that it would be unlikely that six (6) of these species would be occupy the Project area: Piping plover (*Charadrius melodus*), Roseate tern (*Sterna dougallii dougallii*), Red knot (*Calidris canutus rufa*), Bog turtle (*Clemmys muhlenbergi*), Northern wild monkshood (*Aconitum noveboracense*), and Small whorled pogonia (*Isotria medeoloides*).<sup>4</sup> Since these species do not occur in the proposed Project area, DOE concluded that the proposed Project would have no effect on these species.

The remaining three terrestrial species are Indiana bat, northern long-eared bat, and Karner Blue Butterfly (KBB). The habitat and likely effects to these species as described in the BA are discussed below. For the purposes of this discussion, the term Project area refers to the Project as currently configured, as well as the proposed modifications.

### Indiana Bat and Northern Long-eared Bat Habitat

The Indiana bat and northern long-eared bat are federally listed as endangered and threatened, respectively. During winter, the two species hibernate in underground habitats (e.g., caves, mines) known as hibernacula. In the spring, the bats emerge to feed primarily on terrestrial and aquatic insects in wooded areas. Summering bats roost underneath bark, in cavities or in crevices of both live trees and snags (dead trees). Roost trees generally have exfoliating bark which allows the bat to roost between the bark and bole of the tree. Cavities and crevices in trees also may be used for roosting. The Indiana bat could potentially occur in multiple counties in New York State, including those where the proposed action would occur. The northern long-eared bat is potentially found throughout New York State.

### Potential Effects

Suitable roosting and foraging habitats for the Indiana bat and northern long-eared bat occur within and adjacent to the Project area, as well as the alternative routes proposed. These habitats could support spring staging and migration, summer roosting, maternity, fall migration, or fall swarming periods of Indiana bats within or near the Project area.

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<sup>4</sup> DOE, 2014, page ES-3.

The Project area is not in close proximity to any known Priority 1 or 2 hibernacula, and there is limited availability of suitable summer roost trees within and adjacent to the impact area. The Applicant would only engage in tree cutting between October 31 and March 31.<sup>5</sup> During the pre-construction survey, the Applicant's contractors would identify large live or dead trees with peeling bark, such as shagbark hickory, which could serve as maternity or roost trees. These trees would be avoided where possible.<sup>6</sup>

Construction of the proposed Project could create short-term disturbances that could affect bats in the area. Large-scale construction projects create noise, dust, and vibration type effects that may result in disturbance to individual animals. Heavy machinery movement and vehicles have a greater potential for generating noise, dust, and vibrations. Applicant-proposed BMPs (see Section 2.5 of BA) would be implemented to minimize potential construction impacts, such as dust and erosion, but little can be done to minimize impacts from noise (apart from use of improved mufflers) and vibrations from the heavy construction equipment on the bat species. However, given the temporary and variable nature of construction activities, these impacts and behavioral responses to the disturbances were determined to be insignificant.<sup>7</sup> In addition, the proposed modifications would primarily be located along and within existing active railroad and highway right-of-way (ROW) where existing noise levels are elevated compared to adjacent areas.<sup>8</sup>

During operations, vegetation along the ROW would primarily be managed by brush hogging / mowing or hand cutting. Potential effects from mowing on the bat species include noise and dust. Noise created by mowing could affect roosting bats in adjacent forests, but as discussed in the BA, several colonies of bats have been found near mowed ROWs of major roads and appear to not be affected by noise created by mowing and traffic.<sup>9</sup>

#### Karner Blue Butterfly Habitat

Karner blue butterfly (KBB) was federally listed as endangered on December 14, 1992. The KBB is highly specialized on the larval host plant, wild blue lupine (*Lupinus perennis*). Two generations occur per year. One generation hatches from overwintering eggs and emerges from May to June. These adults lay eggs to produce the second generation, which emerges from mid-July to mid-August. Natural habitat for Karner blue butterflies includes pine barrens, oak savannahs, and openings in oak woodlands.

Two of the alternative routes, Selkirk Yard and Schenectady, are identified by the New York State Department of Environmental Conservation (NYSDEC) Environmental Resource Mapper as being within counties that may support KBB habitat. The Selkirk Yard alternative does not appear to have the soil types that support the habitat. Along the Schenectady route, there are sections where the soils could support habitat. No KBB habitat was observed during wetland delineations conducted in the late summer and fall of 2019, but this timeframe is outside of the lupine survey period.

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<sup>5</sup> Ibid., page 5-29, lines 20-21.

<sup>6</sup> Ibid., page 5-29, lines 24-26.

<sup>7</sup> Ibid., page 5-28, lines 11-13.

<sup>8</sup> Ibid., page 5-28, lines 13-15.

<sup>9</sup> Ibid., page 5-31, lines 9-11.

## Potential Effects

Effects on the KBB from construction could occur from vegetation clearing, trenching, and other activities associated with the transmission line. Potential effects from vegetation clearing include habitat degradation via trampling, removal, or other disturbances to wild lupine and other vegetation.

In June of 2011, the Applicant developed the “Karner Blue Butterfly Impact Avoidance and Minimization Report” in consultation with the USFWS and NYSDEC (see Attachment 7). The Report stated that effects to the KBB would largely be avoided by using the horizontal directional drill (HDD) technology to install the transmission line under mapped wild blue lupine habitat.<sup>10</sup> This document further summarized other routing and construction measures that would be employed to avoid direct impacts to the species, as well as occupied and potential habitat containing wild blue lupine and nectar patches. These measures include, but are not limited to: fencing potential KBB habitat prior to any ROW work; avoiding construction within or immediately adjacent to occupied KBB habitat during the adult flight periods (approximately May to August) to avoid mortality of adults; and conducting environmental training related to the species. No pesticides or herbicides would be used in lupine areas, and coordination with the USFWS would be initiated if work near lupine habitat is expected.

Prior to construction, surveys for the presence of wild blue lupine habitat along the proposed route modifications routes would be conducted in accordance with the USFWS and NYSDEC guidance document, “Karner Blue Butterfly (*Lycaeides melissa samuelis*) Survey Protocols within the State of New York.”<sup>11</sup> If any previously unknown (i.e., unflagged) areas containing wild blue lupine are encountered, the Applicant would notify the NYSDEC and USFWS. Areas of wild blue lupine habitat would be identified in the Environmental Management and Construction Plan (EM&CP) that would be submitted to the New York Public Service Commission (NYPSC). In the EM&CP, the Applicant would confirm that the transmission cables would be installed beneath any areas of wild blue lupine habitat.

In a letter dated June 12, 2014, the Applicant further committed to developing a plan in consultation with the USFWS that would promote the growth of lupine within the Applicant’s rights of way. Specifically, the Applicant indicated that it would periodically mow and/or hand cut lupine patches during periods when they are not occupied by butterflies to promote and expand lupine growth. Although this would ultimately be a beneficial action for the species, the Applicant agreed to apply for a Section 10(a)(1)(A) permit pursuant to the ESA prior to project construction to account for any short-term adverse impacts that may occur.

Impacts on the Karner blue butterfly could occur from vegetation clearing and other maintenance activities associated with the transmission line. During operation, limited vegetation management would be conducted along the corridor, primarily to ensure that large woody vegetation does not grow over the cables, or in the event that repairs or other maintenance of the cables is required. However, adverse impacts on the Karner blue butterfly are not anticipated due to implementation of Applicant-proposed avoidance and mitigation measures.<sup>12</sup> These include avoidance of mowing and vegetative removal within wild blue lupine habitat due to the use of HDD, no herbicides or pesticides use within occupied Karner blue butterfly habitat except as approved by the USFWS

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<sup>10</sup> Ibid., page 5-32, lines 10-11.

<sup>11</sup> Ibid., page 5-32, lines 17-24.

<sup>12</sup> Ibid., page 5-33, lines 13-15.

and NYSDEC, and consultation with the USFWS and NYSDEC should there ever be a need to complete operations or maintenance work within Karner blue butterfly habitats.<sup>13</sup>

Next Steps

I'll follow-up with you directly to discuss this matter at your earliest convenience. You may also contact me at any time at 202-586-2942 or [Melissa.Pauley@hq.doe.gov](mailto:Melissa.Pauley@hq.doe.gov).

Sincerely,

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Enclosures:

- Attachment 1: Federal Register Notice for Application to Amend Presidential Permit
- Attachment 2: Application for Amendment to Presidential Permit
- Attachment 3: Revised Biological Assessment
- Attachment 4: USFWS Concurrence Letter
- Attachment 5: NMFS ESA Section 7 BA Review and Concurrence Memo
- Attachment 6: EFH Letter
- Attachment 7: KBB Impact Avoidance and Minimization Report

cc: Stephan A. Ryba, Chief-Regulatory Branch, NY District, USACE  
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Josh Bagnato, Vice President, Project Development, Transmission Developers, Inc.

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<sup>13</sup> Ibid., page 5-33, lines 15-19.