

[6450-01-P]

DEPARTMENT OF ENERGY

(OE Docket No. PP-362)

Record of Decision for Issuing a Presidential Permit to Champlain Hudson Power Express, Inc., for the Champlain Hudson Power Express Transmission Line Project

AGENCY: Office of Electricity Delivery and Energy Reliability, U.S. Department of Energy.

ACTION: Record of Decision.

SUMMARY: The Department of Energy (DOE) announces its decision to issue a Presidential permit to Champlain Hudson Power Express, Inc. (CHPEI), to construct, operate, maintain, and connect an electric transmission line across the U.S./Canada border in northeastern New York State. The potential environmental impacts associated with the transmission line are analyzed in the *Environmental Impact Statement for the Champlain Hudson Power Express Transmission Line Project* (DOE/EIS-0447). The transmission line would cross the U.S./Canada border near the town of Champlain, New York, and extend southward approximately 336 miles to the Consolidated Edison Company of New York, Inc., (ConEd) Rainey substation in Queens, New York.

ADDRESSES: The Final Environmental Impact Statement (EIS) and this Record of Decision (ROD) are available on the DOE National Environmental Policy Act (NEPA) Website at <http://nepa.energy.gov/> and on the Champlain Hudson Power Express (CHPE) EIS web site at <http://www.chpexpresseis.org>. Copies of the Final EIS and ROD are also available for review at the following locations:

- Queens Library – Steinway, 21-45 31 Street (Ditmars Boulevard), Long Island City, NY 11105
- Yonkers Public Library – Riverfront Library, 1 Larkin Center, Yonkers, NY 10701
- Rose Memorial Library, 79 East Main Street, Stony Point, NY 10980
- Kingston Public Library, 55 Franklin Street, Kingston, NY 12401
- Schenectady County Public Library, 99 Clinton Street, Schenectady, NY 12305
- Crandall Public Library, 251 Glen Street, Glens Falls, NY 12801
- Plattsburgh Public Library, 19 Oak Street, Plattsburgh, NY 12901.

Copies of the Final EIS and this ROD may be requested by contacting Mr. Brian Mills, Office of Electricity Delivery and Energy Reliability (OE-20), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585; phone 202-586-8267; email Brian.Mills@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: For further information on the CHPE Project EIS, contact Mr. Brian Mills as indicated in the **ADDRESSES** section above. For general information on the DOE NEPA process, contact Carol Borgstrom, Director, Office of NEPA

Policy and Compliance (GC-54), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585; email askNEPA@hq.doe.gov; or facsimile to 202-586-7031.

SUPPLEMENTARY INFORMATION:

Background

Executive Order (EO) 10485 (September 9, 1953), as amended by EO 12038 (February 7, 1978), requires that a Presidential permit be issued by DOE before electricity transmission facilities may be constructed, operated, maintained, or connected at the U.S. border. DOE may issue or amend a permit if it determines that the permit is in the public interest and after obtaining favorable recommendations from the U.S. Departments of State and Defense. In determining whether issuance of a permit for a proposed action is in the public interest, DOE considers the potential environmental impacts of the proposed project, the project's impact on electricity reliability by ascertaining whether the proposed project would adversely affect the operation of the U.S. electric power supply system under normal and contingency conditions, and any other factors that DOE considers relevant to the public interest.

On January 25, 2010, CHPEI, a private company, applied to DOE for a Presidential permit to construct, operate, maintain, and connect a 1,000-megawatt (MW), high-voltage direct current (HVDC) merchant electric power transmission system across the U.S./Canada border. The proposed CHPE Project would cross the international border from Canada into the U.S. under water in the Town of Champlain, New York, and extend approximately 336 miles (541 kilometers [km]) south through New York State to Queens, New York. The aquatic portions of the transmission line would primarily be buried in sediments of Lake Champlain and the Hudson, Harlem, and East rivers; concrete mats would be used where the line could not be

buried due to presence of exposed bedrock or crossing of other utility infrastructure. The terrestrial portions of the line would be buried within existing roadway and railroad rights-of-way. The project would include installation and operation of approximately 16 cooling stations along the terrestrial portions of the route and an HVDC converter station in Astoria, Queens, New York. The proposed line would be constructed and owned by CHPEI.

Consultation

Pursuant to Section 7 of the Endangered Species Act, DOE has consulted with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) regarding the potential impacts on federally listed threatened or endangered species in the area of the proposed CHPE Project, and DOE has prepared a Biological Assessment (BA). The USFWS on September 10, 2014, submitted a letter to DOE concurring with the findings of the Final EIS and the BA that the proposed CHPE Project: “may affect, but is not likely adversely affect the endangered Indiana bat (*Myotis sodalis*), Karner blue butterfly (*Lycæides melissa samuelis*), or the proposed endangered northern long-eared bat (*Myotis septentrionalis*)” and would result in no effect to other listed species. Based on these comments, DOE is conditioning its Presidential permit to require the Applicant to comply with all practicable means to avoid or minimize environmental harm from the alternative selected as required by the USFWS. The NMFS concurred on September 18, 2014, with DOE’s findings that “the CHPE project is not likely to adversely affect any ESA-listed species under our jurisdiction during construction or over the lifetime of its operation. Therefore, no further consultation pursuant to section 7 of the ESA is required.”

DOE has also consulted with the NMFS regarding impacts pursuant to the Magnuson-Stevens Fishery Conservation and Management Act and has prepared an Essential Fish Habitat

(EFH) Assessment. NMFS provided its conservation recommendations (to suspend in-water work during spawning, early life stages, and migration seasons of aquatic species; monitor re-establishment of conditions and contours after transmission line installation; and establish a compensatory mitigation plan for adverse impacts to aquatic habitats) on August 19, 2014. DOE has no objection to these recommendations.

Consultation with the New York State Historic Preservation Office (SHPO) under Section 106 of the National Historic Preservation Act has also occurred and a historic properties programmatic agreement (PA) between DOE and the New York SHPO has been executed. The PA requires CHPE to prepare a Cultural Resources Management Plan, which will meet the survey, data collection and mitigation measures necessary as identified by the New York SHPO.

NEPA Review

On June 18, 2010, DOE issued a Notice of Intent (NOI) (75 FR 34720) to prepare an EIS for the CHPE Project and conducted public scoping. On April 30, 2012, DOE issued an Amended NOI to modify the scope of the EIS to reflect Applicant-proposed revisions to the proposed CHPE Project and conducted additional public scoping (77 FR 25472).

On November 1, 2013, the U.S. Environmental Protection Agency (EPA) published a Notice of Availability (NOA) of the Draft EIS (78 FR 65643), that began a 45-day public review period, which DOE later extended by 30 days (78 FR 76140). DOE held four public hearings on the Draft EIS and received more than 100 comments on the Draft EIS. Concerns raised in these comments included potential impacts on navigation safety (e.g., whether anchors would snag the transmission line or material placed over the line), aquatic and terrestrial protected and sensitive species, historic resources (including gravesites, particularly near Stony Point, New York, where the transmission line would be installed under historic sites via horizontal directional drilling)

and transportation and traffic. Throughout the EIS process, DOE worked with the cooperating agencies to ensure that impacts will be appropriately addressed. DOE considered all comments received on the Draft EIS in the preparation of the Final EIS. DOE issued the Final EIS in August 2014 (79 FR 48140).

The U.S. Environmental Protection Agency (USEPA) Region 2, the New York District of the U.S. Army Corps of Engineers (USACE), the New York Field Office (Region 5) of the USFWS, the U.S. Coast Guard (USCG), the New York State Department of Public Service (NYS DPS), and the New York State Department of Environmental Conservation (NYS DEC) were identified and participated as cooperating agencies in the preparation of the EIS. The U.S. Army Corps of Engineers will use the EIS in its decisionmaking for the permits required pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. The Corps will issue its own ROD.

Alternatives Considered

In the EIS, DOE analyzed the No Action Alternative and the Proposed Action of granting the Presidential permit for the construction, operation, maintenance, and connection of the proposed CHPE Project facilities. Under the No Action Alternative, DOE would not issue a Presidential permit for the proposed CHPE Project and the transmission line would not be built. Under the Proposed Action of granting the Presidential permit (the DOE Preferred Alternative), the transmission line would be constructed from the U.S./Canada border to the ConEd substation in Queens, New York.

Analysis of Environmental Impacts

The EIS analyzes potential environmental impacts associated with the alternatives for each of the following resource areas: land use, transportation and traffic, water resources and

quality, aquatic and terrestrial habitats and species, aquatic and terrestrial protected and sensitive species, wetlands, geology and soils, cultural resources, visual resources, infrastructure, recreation, public health and safety, hazardous materials and wastes, air quality, noise, socioeconomics, environmental justice, and cumulative impacts.

Analysis of the potential environmental impacts of the Proposed Action on each resource area (Section 5 of the EIS) assumes the implementation of all CHPEI-proposed measures to avoid or minimize adverse impacts (Appendix G of the EIS).

In a floodplain statement of findings (Appendix S of the EIS), DOE prepared a floodplain assessment and has determined that the proposed CHPE Project would avoid floodplains to the maximum extent practicable, that appropriate measures to minimize potential harm to or within the floodplains would be taken, and that the project would comply with applicable floodplain protection standards.

Implementation of the No Action Alternative would not result in changes to existing conditions in these resource areas and is, therefore, the environmentally preferable alternative.

Comments Received on the Final EIS

On September 12, 2014, the USACE submitted a comment letter on the Final EIS that states that the Applicant has supplemented its Clean Water Act Section 404 permit application, which demonstrates a change in the proposed CHPE Project's wetland impacts as follows:

- The proposed CHPE Project's permanent impact on forested wetlands would be reduced to 0.6 acres from 2.0 acres, and
- The proposed CHPE Project's permanent impact on emergent or scrub-shrub wetlands would increase from 8.3 acres to 9.7 acres.

These revised impact calculations do not result in any change in the wetland impact findings in

the Final EIS.

On September 15, 2014, comments were received from Gale Pisha, a private citizen, through the CHPE EIS Web site asking that the Presidential permit not be issued and providing comments with respect to how the EIS addressed impacts in Canada, possible effects on electricity supplies and prices in New York State, the use of park land, and possible safety concerns from cumulative impacts due to the construction of the proposed CHPE line and an identified, foreseeable natural gas pipeline project. Discussion and analysis of these issues are adequately addressed in the Final EIS in Sections 1.7.4 (impacts in Canada), 1.2 (electricity supplies), 1.4 (electricity pricing in New York State), 5.2.1 (use of park land), and 2.4.9 and 2.4.10 (cumulative impacts).

The Port of New York/New Jersey Tug and Barge Committee submitted a letter dated September 8, 2014, stating that they continued to oppose the issuance of a Presidential permit due to the potential for anchor snags and interference with compass readings. Section 5.1.2 of the Final EIS addressed these issues and determined that such impacts from the project to anchor snags and interference to compass readings would not be considered significant. The NYSDPS submitted a comment letter on the Final EIS on September 15, 2014, stating that the EIS analysis and mitigation measures are consistent with the terms and conditions of the Certificate of Environmental Compatibility and Public Need issued by the New York State Public Service Commission (NYSPSC).

The American Waterways Operators (AWO) submitted a letter dated September 15, 2014, stating that they oppose the issuance of a Presidential permit due to the potential for anchor snags unless the cable is buried to at least 15 feet in depth in Congressionally-authorized channels. Anchor snags and burial depths are addressed in Sections 5.1.2 and 5.3.2 of the Final

EIS and it was determined that impacts from such would not be considered significant.

The USCG commented on September 15, 2014, that additional consultation and measures are required to reduce the potential impacts on mariners and the environment from risks associated with constructing and operating the transmission line, including the potential for anchor snags. Based on these comments, DOE is conditioning its Presidential permit to require the Applicant to undertake a revised Navigation Risk Assessment in consultation with the USCG, and to involve the USCG in the preparation of the Environmental Management & Construction Plan with respect to the final location and design of the transmission cables and the communication procedures and notifications for the construction and operation of the transmission line.

New York State Assemblyman James Skoufis provided a comment letter on September 15 that identified an inconsistency with maps of the project route, expressed a concern over when and where the Applicant might use eminent domain to acquire property, and questioned whether the EIS adequately addressed the potential impacts of construction of the proposed CHPE Project on overland areas within Rockland County. DOE notes that the route maps used in the EIS are the same as provided to the NYSPSC by the Applicant and incorporated into the Certificate issued by the NYSPSC, that any land acquisitions would be conducted in accordance with New York State law and as provided in the NYSPSC Certificate, and that land acquisition and construction impacts in Rockland County are addressed in EIS Sections 5.3.1, 5.3.3, 5.3.9, and 5.3.17, respectively.

All comments received on the Final EIS are available in the CHPE EIS Web site Document Library.

Decision

DOE has decided to issue Presidential Permit PP-362 to authorize CHPEI to construct, operate, maintain, and connect a 1,000-MW HVDC transmission line across the U.S./Canada border. The permit will include conditions requiring CHPEI to implement the Applicant-proposed avoidance and minimization measures identified in the EIS, as well as those conditions described above concerning the USFWS and USCG.

Basis for Decision

DOE's decision to grant this Presidential permit is based on consideration of the potential environmental impacts, impacts on the reliability of the U.S. electric power supply system under normal and contingency conditions, and the favorable recommendations of the U.S. Departments of State and Defense (which were provided, respectively, in February and June of 2014).

DOE determined that the proposed international electric transmission line would not have an adverse impact on the reliability of the U.S. electric power supply system. In reaching this determination, DOE considered the operation of the electrical grid with a specified maximum amount of electric power transmitted over the proposed line. DOE reviewed the reliability studies conducted by CHPEI and by New York Independent System Operator (NYISO). These studies are available on the CHPE EIS Web site at <http://www.chpexpresseis.org>. DOE also considered NYISO's interconnection standards and its restrictions on any requested transmission service to and from the proposed interconnection.

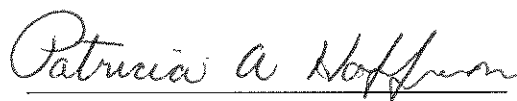
DOE did not select the No Action Alternative because the Proposed Action has been determined to be consistent with the public interest.

Mitigation

All practicable means to avoid or minimize environmental harm from the alternative selected have been, or will be, adopted. CHPEI-proposed measures to avoid and minimize

adverse impacts are described in the EIS, the EFH Assessment, and the BA, and were further refined through consultations with the USFWS, USCG, USACE, and NMFS. All of these measures were incorporated into the Final EIS. CHPEI will be responsible for implementing these avoidance and minimization measures. Additional measures will be required as a result of ongoing consultations (e.g., regarding Clean Water Act Section 404, the Cultural Resources Management Plan) between CHPEI and state and federal agencies as part of approval and permitting processes.

Issued in Washington, DC, on September 24, 2014.

A handwritten signature in cursive script that reads "Patricia A. Hoffman". The signature is written in black ink and is positioned above a horizontal line.

Patricia A. Hoffman
Assistant Secretary
Office of Electricity Delivery and
Energy Reliability