



NORTH AMERICAN MEGADAM RESISTANCE ALLIANCE

WWW.NORTHEASTMEGADAMRESISTANCE.ORG

December 9, 2020

VIA ELECTRONIC FILING

By email to: Secretary@dps.ny.gov

Honorable Michelle Phillips Secretary
NYS Department of Public Service
Three Empire State Plaza
Albany, NY 12223

Re: Case No. 10-T-0139: APPLICATION OF CHPE, LLC AND CHPE PROPERTIES, INC. FOR AN AMENDMENT TO CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED

Dear Secretary Philips:

Please forward these comments as soon as possible to the Commissioners for inclusion in the above-referenced matter.

NAMRA is an alliance of groups and individuals whose mission is to protect rivers and their communities by resisting megadams and their transmission corridors. NAMRA's alliance includes groups and individuals living and working in Canada and in the State of New York who have a specific, concrete interest in the matters that are the subject of the Applicants' proposal to build an approximately \$3 billion transmission corridor to import up to 1,250 MW of electricity produced in Canada to the United States.

Due to the short time frame (18 days over the Thanksgiving holiday) between the Public Service Commission (PSC) November 24, 2020 Press Release announcing the December 1, 2020

public statement hearing and deadline for comments we were unable to submit these by December 1, 2020. We previously asked for an extension of the December 1, 2020 deadline and a second public statement hearing.

We appreciate that the PSC held a public hearing on the October 9, 2020 petition (Petition). We note that the PSC Notice of Public Statement hearing refers to the Applicant as Champlain Hudson Power Express, Inc. (CPHEI) and CHPE Properties, Inc.¹ but actually the PSC approved a transfer of the Certificate to a limited liability company, CHPE, LLC. PSC Case No. 20-E-0145 on July 17, 2020. This was before the Department of Energy (DOE) rescinded the Applicant's Presidential Permit and issued a new permit to CHPE, LLC on July 21, 2020. Permit DOE Office of Electricity, OE Docket No. PP-481.²

This is CHPE's fourth request for a permit amendment within about a year: nine requests to reroute the cable and a request to change Certificate Condition 11. CHPE asked for and received seven rerouting approvals with no public hearing statement and no updated Environmental Impact Statement under the National Environmental Policy Act (NEPA). Petition ¶ 8, note 7.³ The Petition asks for two more: one in Rockland County and second a proposal to reroute under an additional segment of the Harlem River, one mile through Randall's Island Park (the Park) and then under the East River. CHPE misleadingly calls the latter the "Harlem River Yards Bypass Alternative" when it is, in fact, a proposal to reroute this private merchant HVDC cable for up to 1,250 MW through a public park used by 4 million visitors a year.

The PSC Certificate is based on a permit application and Environmental Impact Statement (EIS) that are ten years old. As this project has languished without a buyer, it has been characterized by slipshod planning, collapsing public support (if there ever was any beyond the hand-picked participants to the closed door "Joint Proposal") and unverifiable claims of climate benefits. It has the hallmarks of an arbitrage scheme that greenwashes Canadian hydropower, threatens to make the climate crisis worse, undermines New York's renewable energy economy and perpetuates environmental racism.

NAMRA urges the Public Service Commission (PSC) to deny the Petition and require:

1. A new application under Section 123 of the Public Service Law and a new Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) due to the significant and cumulative impacts of changes requested in the October 9, 2020 petition and prior Certificate amendments, the recent federal Endangered Species Act listing of endangered Hudson River Sturgeon habitat as set forth in the October 8, 2020 *Notice of Violations of the National Environmental*

¹ Notice of Public Statement Hearing, issued November 13, 2020.

² <https://www.energy.gov/oe/services/electricity-policy-coordination-and-implementation/international-electricity-regulation-3>

³ CHPE has also asked the PSC to exempt from public disclosure documents relating to Project financing and construction.

Policy Act and Endangered Species Act sent to the U.S. Departments of Energy and Commerce, the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Army Corps of Engineers from Center for Biological Diversity, NAMRA and the Innu Nation of Labrador⁴ and new information on greenhouse gas emissions from CHPE's power source and the climate impacts of Canadian hydropower.

2. A full evidentiary hearing on claims that the project complies with New York's Climate Leadership and Community Protection Act (CLCPA) including:
 - a. a comprehensive greenhouse gas emissions analysis of the direct and indirect emissions from Hydro-Quebec's sixty-three hydroelectric generating stations, including reservoirs associated therewith that will be used to supply CHPE with up to 1,250 megawatts of electricity, and
 - b. a comprehensive analysis of the climate and environmental justice claims of the Innu Nation of Labrador, the Pessamit Innu First Nation, Wemotaci Atikamekw First Nation, Pikogan, Lac-Simon Kitcisakik of the Anishnabeg Nation, and Innu of Uash and Mani-Uteman against Hydro-Quebec, the Canadian Government and the Province of Quebec that Hydro-Quebec's "state-run extortion endeavor"⁵ including allegations of violations of the United Nations Declaration of the Rights of Indigenous People (UNDRIP), treaties and the Canadian Constitution, and international laws and treaties.
3. A process to include addressing the sovereign rights and claims of the Innu Nation of Labrador, the Pessamit Innu First Nation, Wemotaci Atikamekw First Nation, Pikogan, Lac-Simon Kitcisakik of the Anishnabeg Nation, and Innu of Uashat and Mani-Uteman to ensure that these communities are full participants in the PSC's regulatory proceedings with regard to the impacts of Hydro-Quebec's electricity generation on them that will be supplied to New York via CHPE.

NAMRA has previously submitted the following comments, opposition to permit amendment requests and requests for public statement hearings in this matter. These are incorporated by reference herein to the comments submitted today:

12/1/2020: Press Release from Innu Anishnabek Atikamekw Political Coalition

11/24/2020: NAMRA's request for an additional hearing

10/5/2020: NAMRA's response to Hydro-Quebec's July 13, 2020 letter

⁴ NAMRA filed a copy of the Notice of Violations with PSC on Dec. 1, 2020.

⁵ October 7, 2020 letter to U.S. Department of Energy on Presidential Permit PP-438 to export Hydro-Quebec electricity to Boston from the Pessamit Innu First Nation, Wemotaci Atikamekw First Nation, Pikogan, Lac-Simon Kitcisakik of the Anishnabeg Nation. See Exhibit A hereto.

8/25/2020: NAMRA's notice of submittals of 5 documents on United States International Trade Commission investigation on Canadian hydropower imports, including the August 14, 2020 brief of Senator Mary Jane McCallum of Barrens Land First Nation, Manitoba Region, on the environmental racism of Canadian hydropower

6/15/2020: Article: *Wrong Direction for the Future*

6/15/2020: Riverkeeper, Inc. November 2019 statement withdrawing support for CHPE

6/14/2020: NAMRA Petition to PSC demanding transparency for dirty Canadian hydroelectricity corridor

6/3/2020: NAMRA Opposition to Motion for Opposition to CHPE motion to conduct public statement hearings by video conference and to shorten time for response

6/1/2020: Copy of Baker Botts LLP Letter to the U.S. Department of Energy (DOE) stating CHPE planned to file a new EIS under NEPA by the end of 2020. (PSC Docket 31)

5/19/2020: NAMRA's Request to clarify process for revising Certificate Condition 11

5/19/2020: NAMRA's Letter to DOE on Blackstone request to transfer CHPE Presidential Permit to a new entity

5/18/2020: Comments of NAMRA and Sierra Club Atlantic Chapter on CHPE application to DOE Docket No. PP-362-1 to Rescind Presidential Permit and Application for Presidential Permit

5/5/2020: NAMRA response to CHPE's opposition to NAMRA's April 30, 2020 request for extension of time for public comments

4/30/2020 NAMRA request for extension of time for commenting on Dec. 6, 2019 Petition to modify the route (denied by PSC)

I. GENERAL COMMENTS ON THE PETITION

A. The Project violates CLCPA

CHPE and the PSC both claim the Project complies with the New York State Climate Leadership and Community Protection Act (CLCPA), S. 6599, which became law July 18, 2019, *six years after* the PSC issued the CHPE Certificate. The Act sets a state goal of achieving 100% carbon-free electricity by 2040 and 70 percent of electricity from renewable sources by 2030, requires greenhouse gas reduction of 85 percent from 1990 and offsetting the remaining 15% by reforestation, carbon sequestration and other actions. In approving CHPE's Amendment 2 petition to change the Certificate, the PSC's August 13, 2020 Order states, "In their Amendment

2 Petition, the Applicants noted the public benefits of the Project and the increased need for the Project since its approval, given the passage of State and New York City legislative programs aimed at curbing greenhouse gases (GHG), including the Climate Leadership and Community Protection Act (CLCPA). According to the Applicants, any delay of the approval of the Amendment 2 Petition would not only jeopardize the success of the GHG programs but also jeopardize the ability to close on financing of the construction of the Project, which could delay the in-service date by one year.”

In their October 9, 2020 Petition Amendment 4, Appendix F, Coastal Consistency Analysis, Policy 18, Applicants again claim the project will “reduce CO2 emissions, thus helping to combat climate change.” There is absolutely no credible, independent factual basis for the PSC’s Order adopting CHPE’s claim that there is an “increased public need for the Project since its approval...” on the grounds of climate benefits. Nor are there grounds for CHPE’s October 9, 2020 attempt to claim climate benefits. Nor does CHPE meet the CLCPA requirements for environmental justice which provides that “disadvantaged communities shall receive no less than thirty-five percent of spending on clean energy and energy efficiency programs, projects or investments” with a target of 40% and to reduce emissions and co-pollutants in disadvantaged communities. There is no proof, only speculative unsubstantiated claims, again adopted wholesale by the PSC.

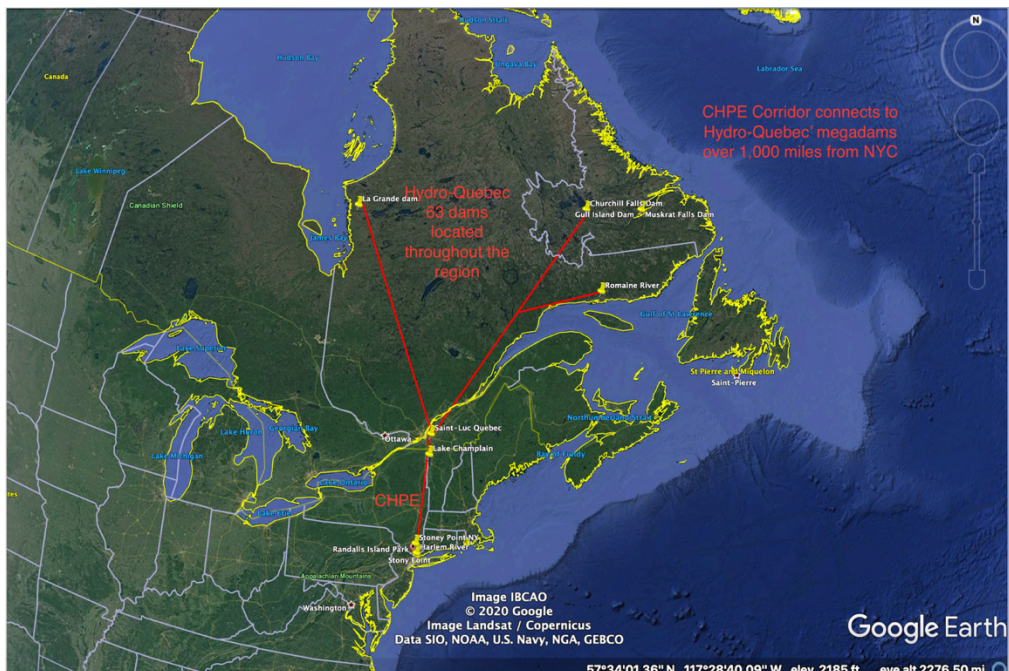
1. Environmental justice violations

Most of the hydroelectricity Blackstone seeks to import to New York is not “owned” by Hydro-Quebec but was unlawfully expropriated from ancestral lands of First Nations and Indigenous communities who are asserting their rights under treaties, the Canadian constitution and international law. Their claims show the illegality of Blackstone’s attempt to sell this electricity across international borders to New York.

On December 3, 2020, five First Nations in Quebec – the Innu of Pessamit, the Atikamekw of Wemotaci, and the Anishnabeg of Pikogan, Lac Simon and Kitcisakik – joined the Innu Nation of Labrador to oppose Hydro-Quebec’s transmission corridor to export electricity to the U.S. See the Indigenous communities’ websites at: www.quebehydroclash.com and www.50yearsastdue.ca These communities have documented repeatedly the unacceptable environmental, social and economic impacts of this hydropower generation – impacts that are on par with the extraction of coal and tar sands oil. Current statements from these communities are attached as Exhibit A hereto. None of the externalities of Canadian hydropower generation are addressed in permitting processes for transmission corridors that export this electricity out of the generation area.

Hydro-Quebec’s electricity comes from a massive network of sixty-three generating stations and reservoirs that dam, dike and divert hundreds of thousands of square miles of river systems in Canada. Most of Hydro-Quebec’s generating fleet was built without environmental

assessments or studies and have permits to operate in perpetuity without conditions and without any meaningful regulatory oversight.



Google Earth map: general locations of Hydro-Quebec's 63 hydropower installation facilities in Quebec and Labrador, including the James Bay region, and distance to New York (about 1,000 miles).

According to the Council of the Innu of Pessamit and Wemotaci in a letter July 24, 2020 to the Premier of Quebec:

Hydro-Québec has never had and still does not have the moral and constitutional legitimacy to operate 33 of the 63 production facilities on the traditional territories of the three aforementioned First Nations [Innu, Atikamekw and Anishnabe]. This is 52% of the Crown corporation's generating fleet. Hydro-Québec has even less the legitimacy to sell electricity in the United States when 13,179 MW, or 36% of the installed capacity in Quebec has been usurped. The First Nations concerned will not allow Hydro-Québec to benefit from their heritage without openly taking part in the debate currently underway in the United States.

See, Exhibit 1 hereto. www.quebechydroclash.com

An additional 15% of Hydro-Quebec's current installed capacity is generated by facilities on the ancestral land of the Innu Nation of Labrador according to the April 2020 Declaration of Chief Rich. Exhibit A. In October 2020, the Innu Nation of Labrador filed a \$4 billion lawsuit seeking restitution from Hydro-Quebec for the ecological and cultural damage caused by the damming of the Upper Churchill River in Labrador that supplies one-sixth (15%) of Hydro-Quebec's electricity supply. Exhibit A. This electricity will be part of the export supply for CHPE.

The Uashaunnuat, Innu of Uashat mak Mani-Utenam also opposes Hydro-Quebec and CHPE. Their ancestral lands are in the North Shore region of Quebec and Labrador. In a October 19, 2009 letter to the New York State Energy Research and Development Authority (NYSERDA), the Uashaunnuat opposed NYSEDA's energy policy that planned to include Canadian hydropower as clean energy.

In the opinion of the Uashaunnuat, this is not clean energy as it will seriously impact the traditional way of life of the Uashaunnuat, the traditional lands of the Uashaunnuat and the natural resources thereof, including fish, waterfowl and other wildlife. The Project will also affect the relationship between the Uashaunnuat and their traditional lands and the natural resources thereof, and will preclude them from carrying out their obligations as stewards of the traditional lands, which is at the heart of Uashaunnuat identity.

In 2010, the Uashaunnuat informed DOE of their opposition to CHPE in comments on the EIS for the Presidential Permit. Their [August 2, 2010 letter](#) states the Uashaunnuat have never consented to use of their ancestral lands for the siting, construction and operation of Hydro-Quebec's Romaine, Upper Churchill, and Lower Churchill megadams and associated roads and transmission corridor infrastructure and that transmitting electricity from these dams is unconstitutional and illegal:

The Uashaunnuat affirm that the existing or proposed production and transportation of energy in or across their traditional lands from hydroelectric complexes such as the proposed La Romaine Project, the Upper Churchill Project and the proposed Lower Churchill Project are illegal and that the Governments of Quebec, Newfoundland and Labrador and Canada, Nalcor Energy and Hydro-Quebec have flagrantly breached and continue to flagrantly breach the rights of the Uashaunnuat in respect to those projects (the "Hydroelectric Projects").

In a April 27, 2012 letter to the PSC the Uashaunnuat again described their opposition to CHPE and the Romaine River dams. The Romaine River dams were being built (now almost completed) to produce electricity for export to the U.S. via CHPE or other corridors. This Indigenous community opposed the "arbitrary and illogical division of La Romaine into separate projects" for environmental study and permitting purposes, referred to the depositions of 25 Uashaunnuat opposing CHPE, concluding, "if approved, would further prejudice the rights, traditional activities and traditional lands of the Uashaunnuat and will have negative and irreparable impacts beyond those identified with the State of New York." Turning a blind eye and wholly disregarding the positions and claims of Indigenous people in Canada, the PSC, the State of New York, the federal agencies and the City of New York have failed to acknowledge or address these claims.

While Blackstone, the PSC and New York promote this electricity as "clean energy" the people suffering the externalities (poverty, lack of clean drinking water, substandard living

conditions) so New Yorkers can feel good about the climate, are ignored, marginalized, erased and told by the PSC that their concerns are “beyond our jurisdiction.” This is hypocrisy. It is not “climate justice” as required by the CLCPA. See, *Brief of Senator Mary Jane McCallum to U.S. International Trade Commission*, August, 2020.

2. Unsubstantiated claims about climate benefits and greenhouse gas reductions

NAMRA’s prior filings address the Applicant’s false claims about climate benefits and greenhouse gas reductions showing they are unsubstantiated. Other commenters to the PSC have submitted information and reports documenting CHPE’s greenwashing. The PSC has never addressed or responded to these comments. None the less, the Applicants continue to call Project one that will deliver “carbon free” or “low carbon” or “renewable” energy. See for example, Petition ¶ 2 quoting the Certificate “the Facility’s expected emission reductions are a substantial environmental benefit, a benefit that is expected to be enduring.”

The climate impacts of Canadian hydropower include the loss of carbon sequestering boreal forests, river, soils and oceans. Over the last 100 years, Hydro-Quebec and the Quebec Government have diked, diverted and dammed hundreds of thousands of square miles of boreal forests and river systems to create the system of 63 generating stations that Hydro-Quebec uses as a source of export supply and that will be used for CHPE. According to the Natural Resources Defense Council, hydroelectric development in Canada’s boreal forests is a form of industrial scale development with a “demonstrable effect on the ecosystem’s role as a carbon storehouse and its ability to remove carbon dioxide from the atmosphere.”

<https://www.nrdc.org/experts/josh-axelrod/panel-industrial-activity-and-climate-canadas-boreal>

Blackstone promotes the Project as a climate solution, saying via Brattle Group, that “[b]y supporting sources of renewable energy that provide an alternative to fossil fuel generation, CHPE will play a key role in helping to deliver carbon-free power to New York City.” <http://chpexpress-os.com/> This will reduce annual carbon emissions by 3.4 million metric tons – equivalent to removing 28% of passenger vehicles from New York City streets.” Calling this “carbon-free” is an outright lie, at odds with Hydro-Quebec’s own emissions that its electricity generation emits methane and carbon dioxide and with peer reviewed science.

New York City, promoting CHPE, also makes unsubstantiated claims about CHPE’s climate benefits. In an October 2020 letter to NYISO, the Mayor’s Office of Sustainability repeatedly refers to Canadian hydropower as ‘carbon free’ without citing even one supporting reference. Notably, even Hydro-Quebec admits that its electricity is not ‘carbon free’ and has GHG emissions. The City further claims that importing Canadian hydropower “can lead to local air quality improvements sooner in New York City, particularly in economic justice communities surrounding the existing fleet” and CHPE will meet the City’s goals of benefiting “economic justice communities” that have been “disproportionately impacted by the in-City fossil fuel generation fleet, so it is important – and consistent with CLCPA and other State policies – that

the potential benefits and impacts on these communities be considered....” Letter, pages 7 and 11, footnote 21. The City ignores the environmental racism caused by the generation of this Canadian hydropower while using “environmental justice” for New Yorkers as a superficial reason to promote CHPE.

New York City’s Local Law 97 allows building owners to purchase renewable energy credits (RECs) from NYSEERDA’s procurements which include Canadian hydropower transmitted by CHPE-- a controversial mechanism opposed by climate justice groups in NYC such as the NYC Environmental Justice Alliance. <https://www.politico.com/states/new-york/newsletters/politico-new-york-energy/2019/05/09/hydro-line-fight-231301>

Further compounding the greenwashing, New York fails to count the greenhouse gas emissions from imported Canadian hydropower in its greenhouse gas inventory. This allows Canadian hydropower to escape accountability for its contribution to the climate crisis caused by its direct and indirect emissions and impacts on forests, rivers and oceans.

NAMRA’s brief to the U.S. International Trade Commission⁶ describes Blackstone’s false claims about CHPE’s climate benefits and explains current science showing that “there is a tremendous range in HQ emissions-from 5g CO2/kWh (half that produced by wind) to 2265 g CO2/kWh (twice that produced by coal). About half of HQ generation is comparable in emissions to natural gas.”

There is no site-specific data for each of Hydro-Quebec’s 63 generations that shows the emissions from each installation. The PSC never held an adjudicatory hearing with the opportunity for public cross examination of the Applicant on the issue. This breaches the most fundamental duties of a public agency charged with representing the public interest and ensuring a full and fair adjudication of disputed issues in a permitting process.

The PSC and the New York Attorney General must take steps to end the greenwashing of this Project and ensure a credible carbon accounting prior to allowing the project to proceed further.

B. Regulatory uncertainty

This Project is plagued with regulatory uncertainty. Many conditions precedent to construction including permits and approvals have not been met. It is impossible for Blackstone to meet these conditions precedent by January 2021. There is no need for PSC expedited review CHPE claims is needed to meet the deadline for the NYISO study process in January 2021. Petition ¶ 19, 20. CHPE claims construction will be delayed by “one or more years”, beyond 2021 and “must have all permit modifications approved no later than January 2021 to enable financing to occur as early as February/March 2021.” ¶ 20. CHPE promised to be online

⁶ July 15, 2020 Pre-hearing brief, Investigation No. 332-574, Section II, filed with the PSC on August 25, 2020

years ago but has floundered for lack of a buyer and public opposition. It is still stalled and cannot meet the conditions precedent by January 2021 even if the PSC expedites the review.

The following is a partial list of preconditions to construction.

1. Requirement to reinitiate consultation under the Endangered Species Act (ESA) and conduct a new EIS

CHPE's permitting will not be complete until the U.S. Department of Energy (DOE) reinitiates the regulatory review process required by the Endangered Species Act and National Environmental Policy Act (NEPA).

On October 8, 2020, Center for Biological Diversity (CBD), NAMRA and the Innu Nation of Labrador issued a *Notice of Violations of the National Environmental Policy Act and Endangered Species Act* to DOE, the U.S. Department of Commerce, the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Army Corps of Engineers (the Notice) for the Project.⁷ The Notice informs DOE it must provide an update of its July 17, 2014 biological study to address newly designated critical habitat for the Atlantic sturgeon in the Hudson River. As stated in the Notice of Violation, DOE and the National Marine Fisheries Service,

...are required to reinitiate consultation to determine whether the Project would destroy or adversely modify critical habitat for the Atlantic sturgeon in the Hudson River in violation of Section 7(a)(2) of the ESA. Since it is readily apparent that construction of the Project is likely to adversely affect critical habitat in the Hudson River for the endangered New York bight, formal consultation is required.... Until such consultation is completed, no construction activities may commence.

The Notice requires a new EIS because after the 2013 Certificate was issued "significant new information has come to light concerning the Project's impacts on the environment. This new information demonstrates that the Project will impact the environment in a manner not considered in Department's [DOE] August 2014 EIS. Therefore, the Department cannot satisfy its obligation to take a "hard look" at the environmental impacts of the Project pursuant to NEPA without a supplemental analysis that is made available for public comment."

According to the Notice, the factors requiring a new EIS are "the environmental impacts of Hydro-Quebec's development of dam infrastructure in Canada to support the Project." Hydro-Quebec has added 5,000 megawatts of hydroelectric generating capacity in anticipation of new markets in the U.S., including New York.⁸ Hydro-Quebec's decision to supply 5,000 MW of electricity for export "was a reasonably foreseeable action linked inextricably to the CHPE corridor, and the environmental impacts of these projects must be fully considered through an

⁷ A copy was filed with PSC on Dec. 1, 2020.

⁸ Testimony of Hydro-Quebec CEO and President Sophie Brochu, July 29, 2020, Hearing before the U.S. International Trade Commission, page 38-39.

EIS including the impacts on Indigenous communities, which have historically been ignored.”
Notice, p. 7.

If consultation is not concluded satisfactorily according to the Notice by December 8, 2020, the federal agencies will be in direct violation of the ESA, invalidating the Presidential Permit and the Army Corps of Engineers permits for waterway and wetlands construction work, raising the possibility of federal litigation over the Project. Construction on CHPE cannot proceed until these violations are resolved.

2. Requirement to comply with Certificate Condition 11

The Applicant cannot start construction without regulatory approval from Canada for the transmission corridor on that side of the border, which it does not have, and with the federal DOE and Army Corps permits which are the subject of the Notices referred to above.

Condition 11 of the Certificate states,

The Certificate Holders shall not place transmission cable in any waterway, trench, conduits, or other location intended for permanent installation prior to the issuance of (i) by appropriate Canadian federal and/or provincial authorities of those approvals and permits necessary in order to allow for the construction of transmission facilities interconnecting with the bulk power system operated by TransÉnergie (or a successor to such organization) and extending to the New York border; (ii) by the United States Department of Energy of an approval pursuant to Executive Orders 10485 and 12038 (the “Presidential Permit”); and (iii) by the United States Army Corps of Engineers of permits pursuant to section 404 of the Federal Clean Water Act and section 10 of the Federal Rivers and Harbors Act (the “Corps Permit”). The Certificate Holders shall provide copies of said permits to the Secretary within fifteen (15) days of receipt. In no event shall a delay or failure to obtain any of the above-referenced approvals serve as an occasion or justification for a deferral or alteration of any and all required site clean-up and restoration activities as set forth in the applicable Environmental Management and Construction Plan and relevant sections of this Certificate and the Best Management Practices (BMPs), including, without limitation, section 11 of the BMPs.

PSC Order, Sept. 21, 2020, revising Certificate Condition 11.

3. Requirement to file report showing binding commitment for 75% of the power

Condition 15(b) of the Certificate (Appendix C to the Certificate) provides that “Prior to, or at the same time they file their EM&CP for the first segment of the Facility, the Certificate Holders shall file a report documenting that they have received binding contractual commitments from one or more financially-responsible entities for a combined total of no less than 750 MW of Firm Transmission Service over the Facility for a period of no less than 25

years. The Certificate Holders may not commence construction of the Facility unless and until the Commission has accepted this report.”

CHPE has not filed such a report and does not appear to have a contract or interested buyer any of the power despite efforts to solicit “interest” in the Project. In June 2020, Blackstone announced that the Brattle Group would be handling the “solicitations of interest” to buy CHPE’s electricity and sought expressions of interest by August 14, 2020.⁹ As of November 30, 2020, there is no indication that Brattle Group has received any expressions of interest as the website still states,

Through the open solicitation process, CHPE, LLC intends to negotiate contracts with qualified parties for firm transmission rights at negotiated rates. Once a subset of prospective customers has been identified through the submission of Expressions of Interest, CHPE, LLC will engage in negotiations with these parties, with the objective of executing one or more transmission service agreements based on mutually agreed-upon rates, terms, and conditions. CHPE, LLC encourages interested parties to submit a non-binding Expression of Interest on or before August 14, 2020.

Prospective customers should be aware that CHPE, LLC’s open solicitation process could result in the initial allocation of all of CHPE’s transmission line capacity. <http://chpexpress-os.com/>

The Brattle Group website further explains, “**CHPE, LLC is assessing the economic and technical feasibility of increasing the capacity of the Champlain Hudson Power Express to 1,250 MW.** If increasing the transmission line’s capacity is not feasible, capacity on the Champlain Hudson Power Express will be allocated to those customers who value it most.” It is incumbent on the PSC to determine whether the Petition Amendment 4 is for a 1,000 or 1,250 MW of power.

4. Requirement to establish the accurate border crossing location

The CHPE permitting documents continue to conflict with the location of Hydro-Quebec’s planned transmission corridor to the border in New York. This was explained fully in NAMRA’s comments to DOE on CHPE’s 2020 request for a new Presidential Permit. (copy filed with the PSC 5/10/2020). CHPE claims the cable will cross the border under water, while Hydro-Quebec shows a land crossing through the Village of Champlain. This is still unresolved.

5. Requirements to obtain DOE approval for route changes and any increase in capacity to 1,250 MW

The DOE Presidential Permit 481 (July 20, 2020) states unequivocally that no changes can be made in the facilities approved by the 2014 DOE environmental impact statement (No. 0447)

⁹ <https://www.brattle.com/news-and-knowledge/news/brattle-consultants-managing-sale-of-transmission-rights-for-tdis-champlain-hudson-power-express>

and Record of Decision “unless approved by the DOE.” Presidential Permit Article 5. Article 3 of the Permit states, “The maximum non-simultaneous rate of transmission over the permitted facilities shall not exceed 1000 MW.” Therefore, the Applicant cannot proceed without DOE approval of the route changes, which requires public notice and comment, and as NAMRA asserts, a new or supplemental EIS.

CHPE itself reports that the U.S. DOE must conduct a public process for notice and comment on the route modifications. In a letter to the DOE on May 22, 2020 and filed with the PSC, attorneys for the Applicant stated that,

CHPE anticipates making a filing with DOE later this year (2020) in which it will propose, and seek approval of, certain modifications to the permitted route. The application to revise the permitted route will include supporting environmental analyses. **As required by applicable regulations, DOE will publish notice of the application and Commenters will have an opportunity to address issues related to route modifications in that proceeding.**

Research on 12/2/2020 does not reveal any such permit application to DOE.

CHPE also stated to DOE that the increase in capacity to 1,250 MW requires a “subsequent application to DOE” stating in the same May 22, 2020 letter,

While CHPE is considering increasing the capacity of the Champlain Hudson Power Express (Project) from 1,000 MW to 1,250 MW, any increase in capacity would be subject to prior review and approval by DOE. **This would necessitate a subsequent application to DOE by CHPE; that application also would be publicly noticed, and Commenters would have an opportunity to comment on the proposal.**

With the prior three permit amendments and now Petition Amendment 4, the route modifications and the increase in capacity must be approved by DOE following publication of public notice and opportunity for public comment. There has been no public notice for either Presidential Permit modification posted as of December 2, 2020. Hence, the public notice and comment cannot be completed by January 2021, CHPE’s purported deadline for consideration in the current NYSIO study year.

C. Joint Proposal unlawful as key party has withdrawn support for the Project

As NAMRA previously asserted in filings to the PSC, the Joint Proposal that is the foundation of the 2013 Certificate now invalid because the Riverkeeper, a key party responsible for implementation of critical monitoring and oversight of the Project publicly withdrew its support for CHPE in November, 2019. The PSC has never addressed this point.

CHPE claims since the Certificate it has “worked diligently...to conduct outreach and coordination efforts directed at interested stakeholders...” Petition ¶ 3. This is contradicted by

the testimony of NAMRA and the Hudson Seven, SPACE and community members at the December 1, 2020 Public Statement Hearing. Major stakeholders were excluded, including municipalities withdrawing water from the Hudson River and Indigenous communities bearing the externalities caused by this Project. The Riverkeeper has withdrawn support. There is no documentation in the Petition application to document support from “interested stakeholders” such as people who will be impacted by the construction route through Rockland County or Randall’s Island Park.

D. Lack of transparency and request for confidential business records

NAMRA joins other members of the public in opposing Blackstone’s November 20, 2020 request that certain financing information be exempt from public disclosure. CHPE states “On November 20, 2020, Certificate Holders filed a petition pursuant PSL § 69 requesting that the Commission grant them flexible financing approval, as lightly regulated entities, to enter into indebtedness through various financing instruments (the “Petition”). The capital raised will be primarily used to fund the construction of the Project.”

The Applicants have cited no valid reason for exempting the information from public disclosure or for treatment as a “lightly regulated entity.” The cost of this project is close to \$3 billion, this is a HVDC cable running 333 miles the entire length of the state. The environmental, economic and social disruption that will be caused by this Project means it should not be a “lightly regulated entity” and means to the contrary, that every aspect of this project should be available for public scrutiny.

CHPE is an investor-owned utility project, considered a merchant line. The owner, Blackstone, owes a fiduciary duty to its shareholders to maximize profits. “An investor-owned utility is like any other publicly traded company -- their primary goal is not to provide a safe and affordable public service, but to maximize short-term profits for shareholders. In the context of energy grid management in New York, this prioritization is manifested in a number of harmful ways.”¹⁰ The PSC’s Certificate does not adequately protect the public interest.

To date, the PSC has conducted most of this proceeding behind closed doors under a blanket of secrecy. There was only a three-day adjudicatory hearing that covered only a fraction of the issues raised by this project. There has been no transparency about CHPE’s payments to municipal officials to silence any opposition.

In the last year, Certificate amendments have been granted behind closed doors; not until the fourth amendment did the PSC decide to hold a public hearing statement and then only on 18 days notice with included the Thanksgiving holiday season. Blackstone should not be

¹⁰ <https://www.pubadvocate.nyc.gov/reports/municipalizing-new-york-citys-electric-grid/>

granted further cover by the PSC whose statutory obligation is to the public, not private Wall Street corporations.

III. SPECIFIC COMMENTS ON PROPOSED “HARLEM RIVER YARDS BYPASS” ROUTE: INADEQUATE JUSTIFICATION, INCOMPLETE ENVIRONMENTAL IMPACT STATEMENT AND FLAWED COASTAL CONSISTENCY REVIEW

Since 2010, CHPE has had an ever-shifting route through New York cities, towns and waterbodies seeking to use them as a private dirty energy highway. The PSC approved seven route changes on August 13, 2020. Petition ¶ 8, note 7. Now, the plan is to reroute a mile of the HVDC cables from an industrial and commercial area, Harlem River Yards (HRY) to Randall’s Island Park. At least one mile of the proposed route will go under this public park.

Instead of calling this the “Randall’s Island Park” route, CHPE misleading calls it the “Harlem River Yards Bypass Alternative”. Randall’s Island Park Alliance (RIPA) operates the Park, promoting it as a place for inner city residents and families to enjoy the outdoors.¹¹ About 4 million people visit the Park annually or 10,000 people daily. www.randallsisland.org Last visited 12/3/2020. Installing the HVDC cables through and around the Park will have significantly different impacts than putting it through the industrial HRY where the route was through a railroad right of way (ROW).

This is the eighth route change and the Rockland County proposal in the Petition is the ninth. Cumulatively, these are major and significant changes, requiring a new EIS under NEPA. The “environmental review” submitted with the Petition is inadequate and flawed.

Flawed analysis of public benefits

The original Harlem River Yards route is the segment where “cables would extend south-easterly within the Harlem river for approximately 6.6 miles, exiting the water to a location along an existing railroad ROW in the Bronx and continuing along that ROW for approximately 1.1. miles. At this point, the line would enter the East River via Horizontal Direct Drilling (HDD), cross the East River and make landfall at Astoria.” 2013 Certificate p. 14.

The new proposed Randall’s Island Park route will “bypass the majority of the Harlem River Yard **through installation of the cables under Randall’s Island Park** and the East River and will include “related facilities and equipment.” Petition ¶8, ¶ 15, and Appendix C. It will “cross under the beds of the Harlem River, Bronx Kill and East River.” ¶ 50. Cables will go under the

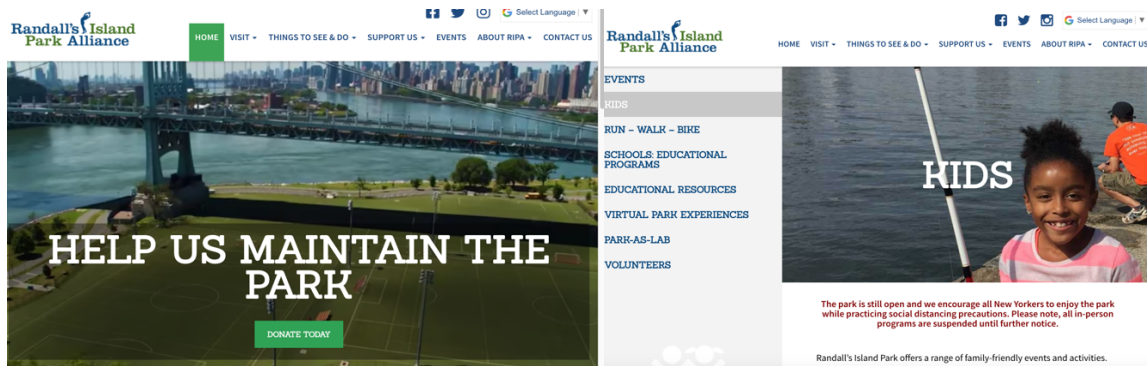
¹¹ “Many visitors are local children and families who participate in RIPA’s free year-round public programming, from festivals and family-friendly explorations at the Urban Farm, scenic waterfront, and wetlands to fun runs at Icahn Stadium, outdoor movie nights, free yoga classes, garden tours and more. In addition, RIPA continues to offer quality free youth programs including: a five-week summer camp serving children from community-based organizations in neighboring Harlem and the Bronx....” <https://randallsisland.org/about/>

northwest portion of the Park, under Bronx Shore Road within the Park, within the paved pedestrian pathways for a half mile, then under the East River, for a total of 1.1 miles over land and 1.0 miles “submarine” or buried under waterways. ¶ 34; Petition Appendix E¹² saying it will run “predominately under athletic fields, paved roads and pathways for **approximately one mile.**”

The 2013 Certificate states there will be “specific facility components including various cooling equipment at locations along the Facility ROW.” Certificate, Joint Proposal ¶71. There will be “line markers, warning signs at navigable waterways, [and] cooling units.” Certificate ¶ 78. The cooling units are above grade at the edge of the ROW. ¶ 84. The Petition to reroute through Randall’s Island Park (or Rockland County) does not identify or describe the “related facilities and equipment”, show their location, size, dimensions, or function. It does not show the line markers and warning signs that will be placed along the shoreline and through the Park where the HVDC cable will be located. This is a fatal flaw in the Petition. It is impossible to determine the impacts of the proposed new route through the Park without knowing what related infrastructure will be installed there and where.

Where the cables enter and exit the water, CHPE will use either a cofferdam, which would be approximately 16 by 30 feet with a dredged entry/exit pit typically 6 to 8 feet deep, or through a steel pipe. Certificate ¶ 30, page 18 of Joint Proposal. The proposed new HRY Bypass route enters Randall’s Island Park from the Bronx Kill and exits on the east side into the East River. The Petition does not provide any detail about whether a cofferdam or steel pipe will be used at the entry and exit points. Petition ¶ 34. The Petition is vague and obtuse on these significant construction components that will have an impact on the Park and its users. Using a cofferdam of 16 by 30 feet will have a different impact than a steel pipe.

Are these visitors and users aware Blackstone plans to conduct a major construction project in the park, digging up one mile of the park and additional areas along the shoreline to install a HVDV up to 1,250 MW electricity cable for a private merchant line to benefit Blackstone’s investors? There is nothing in the record.



¹² 9/25/2020 letter from the New York City Department of Administrative Services (DCAS)

Photos: www.randallsiland.org Last visited 11/30/2020.

Yet, Appendix C, the NYDCAS letter states, “TDI has committed to engage local communities and relevant stakeholders, including elected representatives, through which the line will traverse to ensure the continued well-being of the affected communities.” There is no indication in the record of CHPE engaging local communities and stakeholders, holding any public meetings with people who use the park, abutters or community members who will be impacted. When will this “community engagement” happen? After the PSC approves the rerouting through the Park and when the route is a done-deal and the only option is to discuss mitigation of the construction and operation impacts?

Seeking permission to reroute the cable from the railroad ROW in the industrial HRY through Randall’s Island Park exemplifies Blackstone’s haphazard planning. Since 2010, predictable obstacles surfaced requiring Blackstone to find another route for the HRY segment. As would be expected in an area targeted for the HRY in the South Bronx, a \$700 million waterfront revitalization project, new business have been built. Fresh Direct has put a 400,000 square foot distribution center in the middle of the proposed HVDC route and Fed Ex a 100,000 square foot facility. As CHPE knew all along, multiple underground utilities across in and through HRY, and now there is new buried infrastructure. It also knew or should have known that HDD drilling in HRY near bridges would threaten the structural integrity of bridges and tunnels in the industrial area. Now it uses these factors, which were easily ascertainable in 2010 by basic due diligence, as an excuse to “expedite” the Petition and reroute the line.

The Fresh Direct Bronx distribution center and Fed Ex refused to allow Blackstone to put its private profit-making energy cable through their businesses. Petition, p. 16; ¶127. Seeking to not “pose significant disruption to operation” of private corporations in HRY, CHPE instead wants to use a public park as private energy highway. Unable to convince Fresh Direct and Fed Ex, Blackstone assumes it can bully its way through NY City Hall and get the requisite approvals.

Blackstone claims that it conducted one year of negotiations with the New York Department of Parks and Recreation, Randall’s Island Park Association (RIPA) and NY Departments of Transportation and Law. There is no record of these secret negotiations, no public hearings and no letter of endorsement from RIPA. The only “endorsement” is only by a conditional letter from NY DCAS signed by Chief Energy Management Officer Anthony J. Fiore for the City of New York. Petition ¶ 13 ¶ 14, Appendix C.

The Petition states the HRY alternative “provides an appropriate balance among the various stakeholder interests.” The PSC cannot simply take Blackstone’s claim at face value. It has an obligation to engage with stakeholders and provide a record that the stakeholders agree with this route. CHPE claims that the rerouting through Randall’s Island Park “contributes to the economic and social wellbeing by offering firm renewable energy to NYC”. Application ¶147; ¶s 59. Have the users and stakeholders of Randall’s Island Park been asked if they are willing to sacrifice their Park so that New York can claim it is getting “renewable energy” from Canadian megadams?

Inadequate analysis of potential environmental and human harms from HDD and EMFs

Throughout the Petition, CHPE dismisses the likelihood of any environmental impacts from the Randall's Island (and other routes) claiming that it because Horizontal Direct Drilling (HDD) will be used such impacts are non-existent or minimal. It claims this in ¶ 50, saying "the use of HDD technology to install the cables beneath these waterbodies will avoid environmental impacts by eliminating the need for shoreline trenching and disturbance of shallow water interface between land and water." Petition Amendment 4, Part II, *Description of Environmental Impacts*. The Petition lacks sufficient detail to allow the PSC to determine the environmental risks of HDD under the Bronx Kills, East River and along the shore of the Park.

Recent research describes the potential impacts of HDD as follows:

Environmental risks of HDD: Submarine power cables (SPC) have been in use since the mid-19th century, **but environmental concerns about them are much more recent**. With the development of marine renewable energy technologies, it is vital to understand their potential impacts. The commissioning of SPC may temporarily or permanently impact the marine environment through habitat damage or loss, noise, chemical pollution, heat and electromagnetic field emissions, risk of entanglement, introduction of artificial substrates, and the creation of reserve effects. While growing numbers of scientific publications focus on impacts of the marine energy harnessing devices, **data on impacts of associated power connections such as SPC are scarce and knowledge gaps persist**. The present study (1) examines the different categories of potential ecological effects of SPC during installation, operation and decommissioning phases and hierarchizes these types of interactions according to their ecological relevance and existing scientific knowledge, (2) identifies the main knowledge gaps and needs for research, and (3) **sets recommendations for better monitoring and mitigation of the most significant impacts**. Overall, **ecological impacts associated with SPC can be considered weak or moderate, although many uncertainties remain, particularly concerning electromagnetic effects**.¹³

The route must first be prepared, sometimes with adjustment of the slope and depth, or removal of obstacles before the passage of the cable-laying device. An example of an established method is the pre-lay grapnel run, consisting of dragging a hooking device at

¹³ "A review of potential impacts of submarine power cables on the marine environment: Knowledge gaps, recommendations and future directions, Bastien et al, *Renewable and Sustainable Energy Reviews*, Nov. 2018, Vol. 96, Pages 380-391.

low speed along the planned route to remove any material, such as abandoned ropes or fishing nets. **Cable deployment is a complex process requiring highly specialised equipment.** Cables are usually buried within the seafloor by different techniques including trenching with a cutting wheel...

...During installation, maintenance and decommissioning phases, these effects may include physical habitat disturbances, **sediment resuspension, chemical pollution and underwater noise emission.** More long-term effects may occur during the operational phase, with changes in electromagnetic fields, heat emission, risk of entanglement, chemical pollution, and creation of artificial reef and reserve effects.

CHPE does not explain what potentially contaminated sediments could be disturbed by HDD drilling in this specific area of the Bronx Kill and East River. In ¶s 51 and 52 CHPE says they will “avoid adverse environmental impacts to major aquatic systems” and to “fisheries” by using HDD in these waterbodies. What aquatic systems and what fisheries? This was not analysed in the 2013 EIS because these specific segments of these waterbodies were not studied. What is the protocol if sediments are found? What nearby natural resources could be harmed, such as salt marsh ecosystems, fisheries and wildlife?

The Petition claims that the public health impacts of putting a mile of HVDC cable under a public park where children, families and others spend time recreating, walking, biking, gardening are “anticipated to be consistent with those of the Certified Route since the current of the cables does not change.” Petition ¶ 58. It refers to the EMF study included with the 2013 Joint Proposal. This is not a site-specific study for Randall’s Island Park that has over 4 million visitors each year; the 2014 EIS studied the EMF impacts on a railroad ROW, not a public walking and biking pathway and athletic fields.

There must be a site specific analysis for the EMF impacts on people, wildlife and the environment of burying the HVDC cable in and around the Park. CHPE acknowledges EMF have health impacts, but did not analyze impacts on infants, children or adults who may be using the park for recreation, athletic activities, relaxing, or spending time sitting on grass on top of the HVDC cable.

Incomplete analysis of impact on Open Space and Land Use Goals

Page 26, ¶ 47, *Land Use* § 4.2, CHPE claims the construction activities to submerge the cable under waterways surrounding Randall’s Island Park and burying the cable under a mile of the Park will not interfere with city or state goals for open space or New York’s “Comprehensive Waterfront Plan.” The Application’s claims this is so because the Project “does contribute to the economic and social well-being by offering firm renewable energy to NYC which will provide environmental benefits and potentially serve as an attraction for socially conscious businesses and citizens” and it “should not change the character of the cityscape.” ¶ 35 (page 27, misnumbered paragraph in original) and ¶ 47. This is a *non sequitur*. It does not follow that the concrete physical, visual, and aesthetic impacts of construction for HVDC cables through a

public park are ameliorated by the vague notion that these people are willing to suffer the impacts for the sake of “firm renewable energy” being delivered to New York. Where is the public survey data showing that Park users are willing to accept these impacts in exchange for “renewable energy”?

Further, this analysis is fraught with misrepresentations. Hydro-Quebec’s electricity does not qualify as new “renewable energy” under New York law as previously shown in NAMRA filings. The purported economic claims are specious because according to the EIS, page S-64, CHPE will provide only 26 direct jobs to New York with about 17 of them in New York City itself. The economic benefits are to Blackstone, the private investor that will own and profit from CHPE. There is no evidence that New York’s “socially conscious businesses and citizens” will benefit from their open space being used by a greenwashed dirty energy HVDC cable that transmits electricity from stolen Indigenous lands using public parks and waterways as a private energy highway.

The Petition ignores significant facts about Randall’s Island Park, its uses and character. For example, the Randall’s Island Park Alliance (RIPA) conducts the following activities in the Park aimed at community health and well-being and the ecological and environmental restoration and health of the land, coastal waters and the East River:

- the “Park-as-Lab” program to ensure ecosystem health to sustain the recently-restored marsh¹⁴
- an Urban Farm, a 40,000 square foot environmentally-sustainable garden and outdoor classroom,
- a chicken pasture, rice paddies, and outdoor kitchen.
- a variety of planted and themed gardens and landscaped areas throughout the Park, all created using native species and sustainable practices, which are located primarily along the water’s edge and provide a beautiful and tranquil escape from the hustle and bustle of New York City

¹⁴ Park-as-Lab – <https://randallisland.org/things-to-see-do/park-as-lab/#data> studying benthic macroinvertebrates, fish diversity and water quality, salt marshes, Billion Oyster Project, survey of fish and crustacean, harbor herons, oyster habitat study, phytoremediation of contaminated shoreline soils, study of wetland vegetation, Benthic Survey, Considering the information gathered through this initial study, it is important to continue benthic macroinvertebrate surveying in Little Hell Gate Salt Marsh in the future. It is evident that these species’ presence is absolutely imperative to sustaining the recently- restored marsh. As the area faces constant challenges from its urban location, it is crucial to formally observe the progress of maintaining the marsh since its restoration. In fact, such challenges provoke the need for more frequent monitoring in this area than one might perform in a more isolated setting. This study has shown that a number of important ecosystem functions are, indeed, being performed in the salt marsh, yet there is still the potential for the abundance of such important species to climb. Thus, comparing the abundance of these species observed over time can aid us in analyzing the progression of the ecosystem’s health.

- it maintains state of the art athletic fields, including a golf course, holds yoga classes and has nearly ten miles of “dedicated bicycle and pedestrian pathways” throughout Randall’s Island park and along its waterfront.

<https://randallsisland.org/visit/pathways/>



Map of Randall's Island Park from RIPA website, 12/1/2020

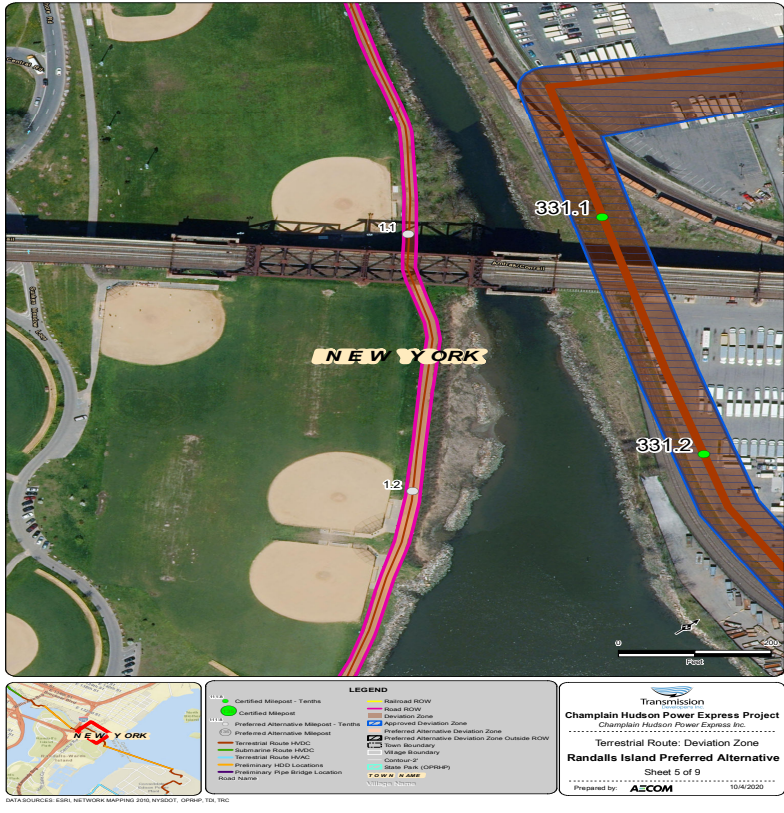


Image: A segment of the proposed Randall's Island Park route where CHPE will run 1 mile of HVDC cable through the north portion of the Park and along the shoreline of the Bronx Kill and East River.

The RIPA map showing activities and uses is not included in the Petition nor does the Applicant give specifics about how the salt marsh, picnic areas, playing fields, almost ten miles of pathways and other areas that will be used for the HVDC cable will be impacted during construction and after installation. There is no map with the Petition where the cooling facilities and other infrastructure along the ROW in the Park will be located.

Page 34, ¶ 57 Noise. One of the main features of the Park is as a “tranquil” refuge from the City. See, RIPA website. Blackstone did not conduct a noise study or provide any information about how the construction and operation will impact the tranquil park setting or the visitor’s use and enjoyment of the Park. All the Petition says is that the noise impacts to the Randall’s Island route will be the same as the Harlem River Yard Route previously assessed by the EIS in 2013. The Petition does not include the results of the 2013 noise study or show what noise was measured where and who were the populations who would be impacted by the noise in the HRY.

The HRY that was the subject of CHPE’s prior noise study in 2013 is an industrial and commercial location, and “at the time of the granting of the Certificate, HRY was home to a

number of industrial and commercial facilities, including but not limited to a major solid waste transfer facility and a 94 MW New York Power Authority (“NYPA”) peaking plant.” Petition ¶ 24. It is absurd to compare the noise impacts on a public park that claims to be a tranquil refuge to the impacts on an industrial and commercial area that includes a solid waste transfer station and a power plant. Randall’s Island Park treasures is “tranquility”: it is not an industrial and commercial site with a transfer station and power station on it. CHPE must be required to provide credible data and a noise study of the impacts on the tranquility and use and enjoyment of the Park by its 4 million annual users and on the wildlife that has its habitat on and near the Island.

On Petition page 31, ¶ 50-*Wetlands and Water Resources* § 4.5, CHPE claims impacts could be as close as 20 feet to the shoreline, that any impacts are expected to be temporary and include indirect impacts from vegetation clearing and ground disturbance in adjacent areas. What are the temporary impacts, what vegetation will be cleared and what grounds? Will the salt marsh shown on the RIPA map in the cable area be disturbed? Is this the same salt mark that the Park is using for the Park-as-Lab project that contains a vital ecosystem? The RIPA site states, “The Randall’s Island Park Alliance (RIPA) maintains a variety of planted and themed gardens and landscaped areas throughout the Park, all created using native species and sustainable practices. Located primarily along the water’s edge, they provide a beautiful and tranquil escape from the hustle and bustle of New York City...” www.randallisland.org

On page 32, ¶ 53- *Wildlife* § 4.8, CHPE claims because the cable goes through “previously disturbed areas” they have “minimized long-term impacts to terrestrial wildlife habitats.” These habitats are not identified. Where these habitats specifically? It then says there will only be temporary impacts to wildlife from “construction noise, ground disturbance and vegetation within the construction zone” but does not identify the wildlife that will suffer the “temporary” impacts.

¶53 *Wildlife* also claims “mobile wildlife species, if any, are expected to move into similar adjacent habitats within the Park during construction and return to the area once construction is completed. It is expected that any wildlife species on Randall’s Island will be well adapted to human activity.” What “mobile wildlife species” does this apply to? What “adjacent habitat within the Park” are they expected to move to? What data shows this species of wildlife is know to “return” to their original habitat after weeks and months of drilling, construction noise, ground disturbance, and vibration?

For other parts of the route, CHPE is using jet plowing with hydraulic nozzles that create a downward and backward flow to create a trench, using a plow blade that cuts into the riverbed while it is towed along the pre-cleared route to carry out a simultaneous lay-and-burial operation. How long will this take in the Randall’s Island area where one mile of cable will go through the park? How long is the cable through the Bronx Kills, Harlem and East Rivers and how long will that take? Will blasting be used as it will be on other parts of the route? The October 2020 *Notice of Violations* describes impacts of HDD under the Hudson River as resulting in disturbance and resuspension of sediments, some containing PCBs and toxic

chemicals, reduced water quality, reduced light intensity in the water column, and other effects that will negatively impact benthic habitat for fish. What are the specific impacts in the waterbodies surrounding Randall's Island?

CHPE states it evaluated environmental impacts "based on aerial photography analysis and a site visit by qualified biologists". ¶ 49. The photographic analysis and biologist report is **not** contained in the Petition application or any of the Appendices. It may not even exist. Why is it not included with the Petition as an appendix?

In ¶54, *Threatened and Endangered Species*, CHPE claims no part of the Randall's Island route is "considered to be prime habitat for any special or unique species due to its previously disturbed and urban setting." There is no documentation to support this. Where is the biologist report or survey? The Petition is signed by CHPE's lawyer not a qualified professional with training to identify whether "special or unique species" have decided use the "disturbed and urban setting" as habitat as much wildlife does. CHPE simply relies on the original EIS, which did not study this new route area. CHPE did not conduct a comprehensive review of the NYSDEC Natural Heritage Community Occurrence database for the entire area that would be impacted by the HDD, noise, dust, vibration etc.; they only looked within 600 feet of the cable route centerline. Page 31. ¶49. This is clearly inadequate.

A preliminary review of publicly available data about the state's protected wildlife species show that at least one state listed Protected Species is found on Randall's Island. This shows that CHPE's environmental assessment is wrong and inaccurate. RIPA conducts annual monitoring and surveys for several species of heron at 10 sites on the Island and has been do so for the last 3 years. The 2019 monitoring results show the presence of the Yellow Crowned Night Heron. This bird is listed as category "S2" and designed "*Imperiled in New York - Very vulnerable to disappearing from New York due to rarity or other factors; typically 6 to 20 populations or locations in New York, very few individuals, very restricted range, few remaining acres (or miles of stream), and/or steep declines.*"¹⁵ In addition, Black Crowned Night Herons, with S3 status, are also found. Why did CHPE not report the presence of these threatened birds, protected by state law?

¹⁵ <https://guides.nynhp.org/yellow-crowned-night-heron/#:~:text=Defined%20as%20a%20Protected%20Bird,no%20open%20seasons%20are%20s et.>



Twitter: Birdwatchers in Randall’s Island, November 2020. Photo of Protected Adult Yellow Crowned Night Heron

In ¶ 55: *Historic and Archeological Resources*, the Applicant says it did a Phase 1A assessment of HRY Alternative to identify archeological sites and submitted the report to NYS Office of Parks, Recreation and Historic Preservation. Where is this document and why is it not included in the Petition application? Does it even exist? CHPE also claims it did a Cultural Resources Management Plan, which would indicate that there is a likelihood that archeological features will be encountered during construction. Where is the Cultural Resources Management Plan? Does it even exist? What cultural resources does the report describe? The Petition’s Coastal Consistency Analysis, Appendix F, Policy 23 also refers to this Plan that “details resource evaluation, avoidance and impact minimization measures....” This Plan must be made public and included in the PSC’s public record for the Certificate.

Page 34, ¶56- *Visual and Aesthetic Resources* is also inadequate. Here again CHPE claims visual and aesthetic impacts “are anticipated to be consistent with those associated with the HRY route” comparing a tranquil public park with an industrial and commercial area with a solid waste transfer station and peaker power station. CHPE claims the visual and aesthetic impacts will be “limited and temporary” but does not say how long they will continue, what type of visual impacts, barriers or intrusions there will be that will impair the scenic aspects of the Park, including its views, specialized flower gardens and landscaping. It has provided no construction schedule, or described what the visual, noise, dust, fumes, warning signs, and construction vehicles would be in the narrow roads and footpaths between the shoreline and the athletic facilities.

Inadequate Coastal Consistency Analysis

Appendix F, the Coastal Consistency Analysis as it pertains to the two new routes is also fundamentally flawed. Using the coastal zone for a private energy highway for a merchant utility is on its face contrary to New York's Coastal Zone Management policies and Local Waterfront Revitalization Programs.

The Coastal Consistency Analysis is inadequate because:

- Policy 8: Applicant has not tested the sediments and water quality for the Randall's Island route and provided no information about what potential hazardous materials and pollutants could be released and resuspended, what the nature and concentrations are, and their potential to bioaccumulate in the food chain or cause significant sublethal effects on food chain resources such as the oysters, fish and other water dependent foods.
- Policy 10: Applicant failed to address the oyster farming on and near Randall's Island as described on the website.
- Policy 11: there are no details on how the cable will be sited to "minimize damage to property and the endangering of human lives caused by flooding and erosion." There is no information on how sea level rise will impact the buried cable in the East River, the Park or the Bronx Kills. Will the cable be capable of surviving flooding and sea level rise?
- Policy 18: CHPE falsely claims (1) the cable will "renewable" electricity to "Existing New York City infrastructure, development and public services" (Policy 5) but it failed to provide evidence of a contract with New York City, which in any event requires an increase in power from 1,000 MW to 1,250 MW; (2) that CHPE is a "new, important source of electricity to New York City that will benefit development and reduce CO2 emissions, thus helping combat climate change" without any evidence (see above).
- Policies 19 - 22: CHPE claims the Project will not harm public access to recreation resources and facilities in coastal zone because the impacts are "temporary" but does not provide the duration, time and scope of the "temporary" impacts; it fails to address the 20-30 year life of the Project that will be abandoned in place after its useful life, what the risks to the public are of leaving the cable there, what the decommissioning plan is if any, for the cable in the Park and surrounding waterways and how this will impact future public uses of public lands and waterways, and what short and long term impacts will be on water dependent uses, or how the cable will enhance recreation. It fails to address impacts of construction, operation and abandonment.
- Policy 26: ignores the urban garden, landscaping and special vistas in Randall's Island Park.
- Policies 32, 33, 34, 36, 37, 38, 39 relate to water contamination new and existing contaminants. These have not been addressed: HDD has potential to spill drilling

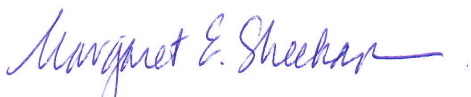
fluids, HDD presents a risk of disturbing contaminated sediments and redistributing them in the water column.

- Policy 41: falsely claims that CHPE will result in cleaner air NY which is not substantiated.

Conclusion

Blackstone's October 9, 2020 petition for the fourth permit amendment is vague, incomplete, erroneous and lacking in required information. The ever-shifting cable route through NY cities, towns and waterbodies is now so vague that it appears even the Applicant is uncertain what is going where. A mere two months after the PSC issued the August 2020 approval to reroute the HVDC cable through Rockland County, in October 2020, CHPE suddenly asked for a second rerouting of the Rockland County route. The Applicant does not have a contract for 75% of the power as required by the Certificate. The cumulative changes along with the newly designated endangered sturgeon habitat require a new or supplemental EIS under the ESA and NEPA. The PSC should deny the fourth amendment and require the relief described above.

Very truly yours.



Margaret E. Sheehan
Coordinator
NAMRA
c. 508-259-9154
coordinator.namra@gmail.com

Copies:

Anthony J. Fiore
Chief Energy Officer, City of New York
NYC DCAS

Susanne DesRoches, Deputy Director
Infrastructure and Energy, City of New York
Office of Recovery and Resiliency
Office of Sustainability

Mark Chambers, Director of New York City Mayor's Office of Sustainability
Dan Zarrilli, One NYC, Director, Chief Climate Policy Advisor dzarrilli@cityhall.nyc.gov

New York City Council, Speaker Cory Johnson

New York City Council, Chair of Committee on Environmental Protection, Cory Constantinides

City of New York Comptroller's Office: David Saltonstall, Assistant Controller for Policy

NYISO Zachary Smith, Vice President & Resource Planning

Kevin S. Parker, Chair, Committee on Energy and Telecommunications Committee, New York Senate