



February 7, 2022

Hon. Michelle L. Phillips
Secretary, NYS Department of Public Service
Three
Empire State Plaza
Albany, New York 12223-1350

Re: Case 15-E-0302 Submitted electronically by e-filing DMM

To Whom It May Concern:

Please accept these comments on the November 30, 2021, Department of Public Service Staff and NYSEERDA petition seeking approval of two contracts for the purchase of Tier 4 REC's by NYSEERDA from Clean Path New York and Champlain Hudson Power Express/Hydro Quebec US "Petition". We write on behalf of the Bronx Council for Environmental Quality, a 501c3 formed in 1971 to establish — as an Inherent Human Right — a sound, forward-looking environmental policy regarding an aesthetic, unpolluted, environment protecting a natural and historic heritage.¹

We find that your petition is based on a flawed FSGEIS² of September 2020 "Report." From 2015 to 2020 the project has changed. During this time, the SGEIS failed to review the impact of the underwater transmission of DC electricity to New York City. It did not recognize Tier 4 and the 2020 revisions of the CES required by the 2019 CLCPA, a new law, as new actions. Even though the reported purpose of your project is to provide renewable energy to NYC, this does not mean you can ignore the new environmental impacts on the communities introduced by Tier 4 contracts. Renewable energy transmission lines and their construction have clear impacts on the people, the natural resources and the habitat of the people of the Bronx. Contracts have been awarded and may be approved without completing environmental impact statements on the impacts of citing newly awarded and already approved contracts in the Bronx and its waterways. In the final analysis, it does not make the Bronx environment better, as there is not even a commitment to closing the "peakers."

We find that the completed environmental reviews, however extensive for upstate communities, and even NYC at large, have not reached the appropriate level identifying critical impacts on the Harlem River from the Hudson River to the East River. These contracts were awarded without requiring location appropriate guidelines and approved maps for the transmission lines and installation. Specifically, the contracts have been awarded without knowing, or examining the impact of the transmission line on the Harlem River and possible landfall in Harlem River Yards. It has not followed up on information from prior reviews, including the US Army Corp of Engineers 2015 report. More importantly, it has not included a transparent and public process for the people of the Bronx to participate until the contract approval stage.

We humbly request the opening of a supplement to the 2020 FSGEIS, or a site specific non generic FSEIS on impacted areas in the Harlem River, including Manhattan and Bronx waterfronts.

¹ During more than 50 years of volunteer service to the Bronx, our goal was to advocate for improving water quality, developing waterfront greenways and recreational uses, and restoring shoreline natural habitats, among others.

² [Final Champlain Hudson Power Express EIS Summary 2014](#). This CHPE FEIS is incorporated in the 2020 SGEIS, 2018 GEIS, 2016 SEIS, and 2015 GEIS (collectively, Prior SEQRA Analyses).



This step would recognize the CLCPA, and 2020 CES, and Tier 4 as new actions. Without such review, appropriate mitigation or safety concerns will be missing, causing delays to the goals of the project. Said Report is inadequate as it stands, and harms our rights to participate in the State's review because it is too late to have party status in a crucial determination: CHPE's Article VII certification. We also note that the Tier 4 project effectively grandfathers CHPE's contract and its Article VII certification that were completed prior to 2019 CLCPA and the 2020 CES for its compliance with them. While those reports are primarily about CHPE, we fear that Clean Path will be using the same route. Without a supplemental EIS, we will have missed not one but two opportunities to guide the siting process for the contracted RECs.

Environmental Justice

In Section S.8.19, under Environmental Justice the 2020 FSGEIS Summary states "Construction and operation of the proposed CHPE Project would not result in disproportionately high and adverse effects on minority and low-income populations." (S-64). Later, the same section continues, "The census tracts along the proposed CHPE Project transmission line corridor have minority or low-income population levels that generally are lower than those for New York State, except for census tracts closest to New York City where a larger number of minority and low-income populations reside, particularly in Queens."

There is no mention of the people of the Bronx, or other parts of the Harlem River Watershed, such as in Northern Manhattan. These areas have not reached comparable agreement as upstate impacted communities with your contractors for Tier 4. We do not believe the contract can be approved without such an agreement. Such an agreement should include project labor agreements for local employment, a construction mitigation plan approved by the local Community Board and community stakeholders, and a firm timeline for the closing of "peaker" plants and existing coal-firing plant in the Bronx, which are required by CLCPA law but not included in the PSC contract.

Construction Impacts on the Harlem River

Under S.6.3 *Construction* Section, the Summary Report describes *Aquatic Construction Sequence*. This installation of the aquatic portion of the transmission line would occur via jet plow in all locations except where installed by shear plow in southern Lake Champlain (south of MP 74), installed by HDD at water-to-land transitions and under the East River, laid on the surface over bedrock or utility line crossings and covered with concrete mats (total 3.0 miles [4.8 km] for entire aquatic portion of the proposed CHPE Project route), and blasted for 460 feet (140 meters) of trench at MP 324.5 in the Harlem River. Other places in the Report discuss blasting, temporary loss for commercial and recreational dependent uses, bridges, utilities, etc.³ There is no discussion of the rock

³ Rather than reprint your Report here is a list: "Impacts on aquatic navigational operations along the proposed CHPE Project route would occur from the installation of the aquatic transmission cables. Construction activities associated with the installation of aquatic portions of the proposed CHPE Project would include the generation of additional vessel traffic and clearance of areas in the Harlem River due to blasting, which on a small scale could inconvenience and create minor navigational obstacles (e.g., temporary loss of use of portions of waterways) for commercial and recreational water-dependent uses. Each blast event in the Harlem River would only take a few seconds; however, prior to each blast, the area would be cleared to a distance determined by the fire marshal and the harbormaster. ... For areas where the proposed aquatic transmission cables pass beneath bridges, construction would be coordinated with the owner of the bridge regarding clearances, distance from abutments and existing infrastructure, cable burial, and installation methods."



at the bottom of the Harlem.

Second, the 2015 United States Army Corps of Engineer (USACOE) report for the CHPE permit **NAN-2009-01089** in this area contains essential information about potential impacts that is not incorporated into the Summary Report of the Aquatic Construction Sequence (S28). Then, in the Permit of 2015⁴ - Burial depth minimums for the Hudson, Harlem and East Rivers (all of which are adjacent to the Bronx at points.) See below from page 2 of said permit:

i. Within the Hudson River, except for the maintained portions of the Federal navigation channel, the **top-of-cable burial depth shall be a minimum of 7-feet below the existing bottom**, subject to deeper burial depth requirements based on the results of the Navigation Risk Assessment required in Special Condition B. Within the maintained portions of the Federal navigation channel in the Hudson River, the required minimum top-of-cable burial depth is 9-feet below the authorized channel depth. To the extent the cable pair is installed in or under the Mohawk River, the cable pair shall be installed by horizontal directional drilled tunnel no less than 15-feet below the existing bottom.

ii. Within the Harlem River, the **required minimum burial depth in rock is 6 feet** below the portions of the Congressionally-authorized mapped or marked navigation channel that require a channel depth of -15 feet Mean Low Water Datum, and 8-feet below the Congressionally-authorized channel depth elsewhere within the mapped or marked navigation channel. In other waters of the Harlem River outside of the mapped or marked navigation channel, the required minimum burial depth is 4 feet below the existing bottom.

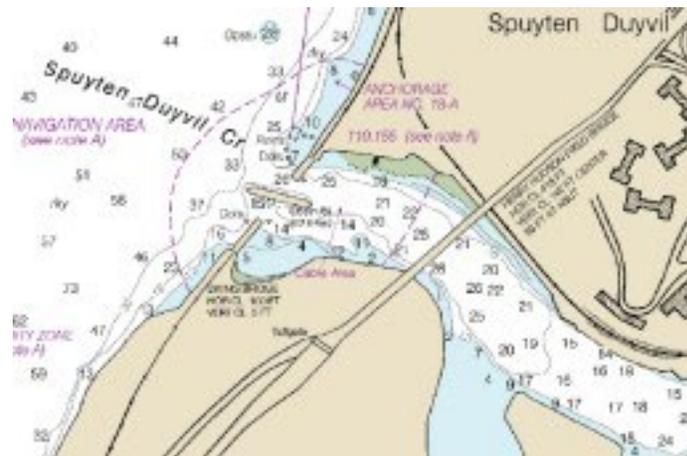
iii. Within the Harlem River, where obstructions, such as existing underwater infrastructure (**e.g., electric cables, gas pipelines, water and sewer mains, telecommunication cables and conduits, movable bridge control cables, etc.**) are encountered, and an obstruction prevents the submarine power cable from being installed to the above-specified burial depths, the cable pair may be installed over the obstacle, provided that sufficient protective armament covering, such as articulated concrete mattress or articulated pipe, is installed at the same time, subject to the specific approval of this office.

iv. Within the East River, the cable shall be installed in a horizontally-directional drilled **tunnel no less than 15 feet below** the Congressionally-authorized mapped or marked navigation channel depth of -35 feet Mean Low Water Datum.” **[bold emphasis added]**

⁴ <https://chpexpress.com/wp-content/uploads/2021/04/CHPE-Army-Corps-Permit-with-modifications-1-4.pdf>



In other words, the Hudson River required minimum burial depth in rock is 7 feet below the existing bottom, except for the portions of the Federal navigational channel and depending on the Navigation Risk Assessment. In the Federal Navigation Channel, the required minimum is 9 feet below the authorized channel depth. But the Harlem River cable can be installed above the burial depths if there are obstructions (such as electric cables, gas pipelines, water and sewer mains, telecommunications cables and conduits, movable bridge control cables), provided that there is a protective armament covering, such as an articulated mattress or pipe at the same time. Seems as though the different choices were based on economic and not environmental, health or equity impacts. In the East River, we find the cable shall be installed no less than 15 feet below the Congressionally authorized mapped or marked navigation channel depth of -35 feet Mean Low Water Datum.



In the NOAA Chart Maps for the Harlem River,⁵⁵ soundings show that the Hudson is at 50 feet at the entrance to the Harlem River, which then goes to 25 feet and lower in the Harlem. The 36 acres of disturbance⁶ under the water of the already lower river bottom is a critical and comparatively densely populated area from the rest of the state, with sensitive natural resources including protected wetlands in both counties. These impacts are not described or reviewed for a mitigation plan.

In fact, the 2021 [supplement](#) mainly focus' on the Harlem River Yards. As you know, this property is owned by New York State, is located along a fragile waterfront, not accessible by the public, filled with numerous unmitigated NYC combined sewer overflow, and other (potentially state owned) outfalls that frequently discharge into the river. There is no difference in the supplement (Supplement page 29) for the Harlem River:

“The soils and geology impact types and mechanisms are the same as described in the 2014 FEIS, because construction and operation would be conducted generally in the same manner along the Route Modifications. One notable difference is the Applicant’s addition of another cable installation option called Series Installation Method. This method would

⁵ https://www.charts.noaa.gov/BookletChart/12342_BookletChart.pdf page 4

⁶ http://chpexpressis.org/docs/CHPE%20Supplement%20Analysis_April2321_508.pdf



reduce surface disturbance and lessen the duration of impact compared to the direct burial technique.

105,000 cubic yards of temporary disturbance of Lake Champlain sediment.⁷

645.2 acres of temporary terrestrial upland disturbance.⁸

228,997 cubic yards of temporary disturbance of Hudson River sediment.⁹

11,000 cubic yards of disturbance in the Harlem River.

460 feet of rock blasting in Harlem River.”

Lastly, the water quality of the Harlem River is already on New York State’s Listing of Impaired Waters under the Federal Clean Water Act 303d. There are many reasons for this impairment. The Harlem River has the largest number of combined sewer overflow outfalls in the city. Many of these outfall’s overflow during dry weather. The United States Geological Survey is currently studying fecal indicator bacteria from sediment disturbed from boat wakes.

Discussion of Missed Impacts on a “Disadvantaged Community”

This transmission route passes more than 800,000 people residing in Bronx Community Boards 1, 4, 5, 7, 8, and Manhattan Community Boards 10 and 12 – most of whom are minority and low income. In fact, the entire existing transmission route in NYC is only located among minority and low-income populations. The FSGEIS had no examination of an alternative route within the City of New York.

The Bronx is home to the High Bridge – the oldest bridge in the City of New York. When the city built the New Croton Aqueduct for the thirsty city, they drilled under the Harlem River at the turn of the 20th Century -- which must have been difficult. If that was a major project, given the USACOE permit that the Harlem River’s 13 bridges need to be coordinated, it seems the planned route was not well thought out.

Several power related facilities are already in the Bronx, including a Con Edison Gasline at Fordham Landing waterfront, additional Con Ed properties along the waterfront, and NYPA “peaker” plants along the New York State Property known as the Harlem River Yards.¹⁰ It is easy

⁷ In the 2014 EIS it was 127,000 cubic yards of temporary disturbance of Lake Champlain sediment.

⁸ In the 2014 EIS it was 646 acres of temporary terrestrial upland disturbance.

⁹ In the 2014 EIS it was 229,000 cubic yards of temporary disturbance of Hudson River sediment.

¹⁰ Located at the intersection of the Metropolitan NY NJ Connecticut Area, the Bronx experiences the death by 1000 cuts: ● Cross Bronx Expressway divides the Bronx in half ● Highest New York City Housing Authority buildings per capita ● Pelham Bay Park Garbage Station – many sick from toxic illegal dumping, BCEQ’s first fight ● 7 Highways leading to and from the metro area - Major Deegan Expressway (I-87), Cross Bronx Expressway, Bruckner Expressway, New England Thruway, Bronx River Parkway, Hutchinson River Parkway ● 3 Railroads - Metro North East and West, including the Oak Point Link that blocks shoreline ● 11 Bridges - Henry Hudson, Broadway, 207th Street/Fordham Road, Hamilton, Highbridge, 161st Street, 145th Street/149th Street, 3rd Avenue, Metro North Train, Triboro RfK, Throggs Neck, Whitestone, City Island ● 17 Major Regional Projects: DEP Filtration Plant, Jerome Park Reservoir, and Third Water Tunnel; NYPD Shooting Range; MTA Rail Car Wash; Hunts Point Meat and Fish Market, Yankee Stadium, future Soccer Stadium, Harlem River Yards, Renewable Energy Plans, and temporary Peak Power Plants. ● Lack of public Open Space, particularly in the denser south Bronx, while large swaths of land are for fee-based open space (i.e. NYBG, WCS) ● Under managed, not maintained, or enforced city services and violations ● Overcrowded public schools ●



to see how we have taken our fair share, much to our detriment.

The Bronx is still ranked 62 out of 62 counties in health outcomes in New York State. Life expectancy is the lowest of the City's boroughs (80.6 years), and with the highest number of people with no health insurance. It was noted that in the beginning of the pandemic, that Bronx communities shouldered an outsized burden of NYC's COVID related death toll, Bronx residents were twice as likely to die from the virus than any other borough. The Bronx also has the highest rate of asthma and diabetic patients using insulin.

The highest number of low-income communities in NYC is in the Bronx, with a seriously high percentage of population with income below the poverty level. A 2016 report from NY-NJ Harbor & Estuary Program listed the Bronx as the highest need with regard to public access to the waterfront. "Despite many large-scale parks within its region, . . . the Bronx higher need area is characterized by the second lowest median household income of all groups (\$31,394) and little access to the Harlem River, in particular."¹¹ Unfortunately, the FSGEIS and the PSC contract does not include documentation of the Bronx's existing conditions and how they may be impacted by the proposed action. We find this omission to be all too familiar but hope that PSC will recognize the importance of new environmental reviews of the waterways and the communities that will be impacted by its decision.

Please find the BCEQ [Principles for Renewable Energy Development](#).

Sincerely,

Karen Argenti
BCEQ Secretary

Robert Fanuzzi
BCEQ President

Inaccessible Waterfront fronted by Highways Railroad & Bridges.

¹¹ Other impacts include: High dropout rate connected to polluted and noisy highways. Siting industry and commercial uses on waterfront instead of public docs and parks. No neighborhood planning, ignoring competition for Supermarkets, Fresh Fruit, etc. Interrupted greenway for safe pedestrian and bicycle use with many off roads onto highly trafficked. Extraordinary disinvestments relative to the rest of the city, that equal decades of bank closings, redlining, neglect, and destruction.