

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on January 21, 2021

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Diane X. Burman
James S. Alesi
Tracey A. Edwards
John B. Howard

CASE 10-T-0139 - Application of Champlain Hudson Power Express, Inc. for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII of the PSL for the Construction, Operation and Maintenance of a High Voltage Direct Current Circuit from the Canadian Border to New York City.

ORDER GRANTING AMENDMENT OF CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED SUBJECT TO CONDITIONS

(Issued and Effective January 26, 2021)

BY THE COMMISSION:

INTRODUCTION

On April 18, 2013, the Public Service Commission (Commission) granted a Certificate of Environmental Compatibility and Public Need (CECPN or Certificate) to Champlain Hudson Power Express, Inc. (CHPEI) and CHPE

Properties, Inc. (CHPE) (collectively, the Applicants),¹ authorizing, subject to conditions, the construction of a High Voltage, Direct Current (HVDC) transmission line extending approximately 330 miles from the New York/Canada border to a proposed DC-to-Alternating Current (AC) converter station in Astoria, Queens; and an approximately 3-mile long 345 kV AC cable within the streets of Astoria, Queens to a point-of-interconnection with the Consolidated Edison Rainey substation (the Astoria-Rainey cable); (altogether the Project or Facility) pursuant to Public Service Law (PSL) Article VII.²

The HVDC transmission line will be located underground beneath waterways and in upland areas along existing highway, street or railroad rights-of-way (ROW). The Project's HVDC cable system will consist of two solid dielectric (*i.e.*, no insulating fluids) electric cables, each approximately six inches in diameter. The Project will have the capacity to

¹ On July 16, 2020, the Commission approved the transfer of the Certificate to CHPE, LLC from Champlain Hudson Power Express, Inc. ("CHPEI"). For the purposes of this Notice, "Applicants" represents both past and current Certificate Holders. In August 2020, Champlain Hudson Power Express, Inc. converted from a corporation (CHPEI) to a limited liability company (CHPE LLC) and received Commission approval to transfer its CECPN from CHPEI to CHPE LLC. See, Case 20-E-0145, Petition of Champlain Hudson Power Express, Inc., CHPE Properties, Inc., and CHPE LLC for a Declaratory Ruling that a Series of Intra-Corporate Transactions are Not Transfers Subject to Review Under the Public Service Law or, in the Alternative, for Certain Approvals Pursuant to Sections 70 and 121 of the Public Service Law, Order Approving Transfers (issued July 17, 2020).

² Case 10-T-0139, Application of Champlain Hudson Power Express, Inc. for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII of the PSL, Order Granting Certificate of Environmental Compatibility and Public Need (issued April 18, 2013) (Certificate Order).

transmit up to 1,000 megawatts (MWs) of electricity into the New York City load pocket. It is anticipated that the electricity transmitted by the Project will be primarily hydroelectric power.

As described more fully below, the Applicants recently obtained Commission-approved Certificate amendments related to certain Certificate conditions and route modifications. On October 9, 2020, the Applicants filed a petition, pursuant to Section 123(2) of the PSL, to further amend the Certificate to authorize two additional modifications to the certified Project route ("Amendment 3 Petition"). As described more fully below, the first modification is to the routing in the Harlem River Yard in New York City and the second modification is for augmentation of the Deviation Zone in select locations in Rockland County.

Through this Order, the Commission approves the requested Amendment 3 Petition on the two modifications to the originally certificated Project route pursuant to PSL §123(2).

BACKGROUND

The Applicants filed a Petition for an Amendment of the Certificate, pursuant to PSL §123(2), on September 30, 2019, which sought changes to certain conditions to the Certificate ("Amendment 1 Petition"). More specifically, the Amendment 1 Petition sought approval of changes related to (1) updating previous filings regarding Project construction, (2) avoiding delay in Project construction related to the issuance of Canadian permit(s) (Certificate Condition 11), and (3) ensuring efficient processing of construction and post-construction filing requirements. The Commission granted, in part, the Amendment 1 Petition on March 20, 2020, but reserved judgement on the portion of the Amendment pertaining to Certificate

Condition 11. After the Applicant submitted additional information, the Commission granted the remaining portion of the Amendment 1 Petition revising Certificate Condition 11 on September 21, 2020.

On December 6, 2019, the Applicants filed a petition for a second amendment to the Certificate ("Amendment 2 Petition") seeking approval of certain preferred alternatives ("Preferred Alternatives") to the certified Project layout. The Preferred Alternatives included minor routing changes and the relocation of the converter station site that were needed "to, among other things, avoid shallow water engineering challenges, reduce rock removal and wetland impacts, eliminate disruption to downtown Schenectady, forego reliance on an aging railroad bridge, accommodate community concerns, and simplify the design of the Converter Station and the connecting electrical facilities. The Amendment 2 Petition was granted on August 13, 2020.

The Applicants filed the instant Amendment 3 Petition on October 9, 2020, seeking approval of proposed modifications to two portions of the certified Project layout. The first requested modification seeks authorization to expand the Allowed Deviation Zone (ADZ) in New York City (NYC) to allow installation of the Project cables to bypass the majority of the Harlem River Yard (HRY) in the southeasternmost portion of the Bronx, through installation of the cables underwater across the Bronx Kill and underground in Randall's Island Park, Borough of Manhattan, directly across from the HRY (the "HRY Alternative"). The second requested modification seeks authorization to augment the ADZ in Rockland County to allow five splice vault locations on private land immediately adjacent to the revised ROW within NYS Route 9W, instead of in the active travelled portion of Route 9W ROW (the "Rockland County Adjustment").

On December 9, 2020, the Chief Administrative Law Judge, Dakin D. Lecakes, issued a "Ruling on Process," which held that a hearing was not required because neither of "the proposed route modifications would result in any material increase in any environmental impact of the facility or whether they would be a substantial change in the location of the Project, other than as provided in the alternates set forth in the application."³ Judge Lecakes concluded that the proposed route modifications were "designed to further avoid and minimize potential environmental impacts and post-certificate identified engineering constraints from those impacts that would be caused by the Project as currently certified"⁴ Consequently, Judge Lecakes found no additional litigation process was required and "the matter may proceed to the Commission for final determination."⁵

NOTICE AND PUBLIC COMMENTS

A "Notice Soliciting Comments" was issued on October 23, 2020, which requested public comments by November 13, 2020. Hardcopies of the Amendment 3 Petition were mailed to parties as required by PSL §122(2) and pursuant to 16 NYCRR §85-2.10(c). The Amendment 3 Petition was also served via email on active parties to this proceeding and on all potentially newly affected landowners and municipalities in conjunction with its filing of the Amendment 3 Petition. On November 6, 2020, in accordance with the Commission's Rules at 16 NYCRR §85-2.10(c), the Applicants provided seven Affidavits of Publication of the

³ Ruling on Process (issued December 9, 2020), p. 3.

⁴ Id.

⁵ Id., p. 4.

Notice of Application to Amend the Certificate issued by the Commission on April 18, 2013, relating to their Amendment 3 Petition.

On November 13, 2020, a "Notice of Public Statement Hearing" to be held on December 1, 2020, was issued. The Notice provided that "[a]lthough comments will be accepted throughout the pendency of this proceeding, they are requested by December 1, 2020."

After the Amendment 3 Petition was filed, several groups and individuals submitted comments opposing the Project as a whole (e.g., noting environmental impacts to Indigenous Peoples of Canada; and impacts to the Hudson River), a few submitted comments pertaining to the route modifications in Rockland County, and a few commenters requested an additional public hearing. Letters in support of the Rockland County Adjustment in the Amendment 3 Petition were filed by the Towns of Clarkstown, Stony Point, Haverstraw, and the Villages of Haverstraw and West Haverstraw (the Rockland County Towns and Villages). The comments submitted that specifically address the proposed routing changes in the Amendment 3 Petition are addressed below.

City of New York

The Applicants included a letter from NYC, dated September 25, 2020, as Appendix E of the Amendment 3 Petition. The letter notes that representatives of the New York City Department of Parks and Recreation and Department of Transportation, worked with the Applicants' consultant Transmission Developers, Inc. (TDI) to evaluate the proposed route to avoid the HRY by utilizing the Randall's Island Park underground route. NYC stated its general support and noted its conceptual agreement provided certain outlined parameters were included in the agreement, including: the use of Horizontal

Directional Drill (HDD) technology to install the cable between the shoreline and the transition vaults, and placing the HDD receiving and launching areas in locations recommended by the City; using open trench methods to install cables for the portion of the route between the two transition vaults approximately six feet below the ground surface; installing two transition vaults under the paved road, each with two 24 - 36-inch diameter manhole covers at surface elevation; performing construction activities during off seasons; and "full and prompt restoration of impacted park facilities."

The Rockland County Towns and Villages

In their comments in support of the Amendment 3 Petition filed between November 24, and December 3, 2020, the Rockland County Towns and Villages noted they had been fully briefed on the proposed modifications to remove the splice vaults off Route 9W and believe they are a "positive change" for their residents and "will improve construction traffic flow."

Towboat and Harbor Carriers Association of N.Y./N.J.

Captain Eric Johansson, the Executive Director of the Towboat and Harbor Carriers Association (Association), who, the Commission notes, is a party to the Certificate proceeding, submitted comments on November 30, 2020, regarding its interests in the depth of in-water burial. The Association requested to be consulted on final burial depth and location. While the letter specifies the Hudson River, they are likely to be interested in the Harlem River navigation considerations as well. Department of Public Service Staff advises that final Facility design, including burial depth details, will be proposed in the Environmental Management and Construction Plan (EM&CP) to be filed, and available for the Association's review and comment, pursuant to Certificate Conditions 95(a), 145, and 152 of the Certificate Order.

North American Megadam Resistance Alliance

The North American Megadam Resistance Alliance (NAMRA) filed comments on December 9, 2020. NAMRA's comments largely address its opposition to the Project as a whole but do include a section specifically addressing the HRY Alternative proposed in the Amendment 3 Petition. NAMRA stated that the impacts going through and around Randall's Island Park are significantly different than going through the industrial/railroad ROW and that the petition lacks details as to the location of facilities and equipment, such as cofferdams or pipes, as well as details about community engagement. In addition, NAMRA stated that the petition lacks sufficient detail to determine environmental risks of HDD and the potential to disturb contaminated sediments under the Bronx Kill, East River and along the shore of the Park. NAMRA also questioned the environmental impacts of the Project to wetlands and water resources, threatened and endangered (T&E) species, visual, and noise, as well as potential increases in electro-magnetic fields (EMF). Lastly, NAMRA stated that the Coastal Consistency analysis is "flawed" and is "contrary to New York's Coastal Zone Management policies and Local Waterfront Revitalization Programs."

The Applicants submitted a point by point response to NAMRA's comments on December 30, 2020. In their response, the Applicants noted that most of the details and studies sought by NAMRA are already included in the Amendment 3 Petition and existing administrative record, including the location of facilities and equipment. In response to the concern about the alleged lack of public outreach, the Applicants provided a detailed list of all the outreach they conducted with multiple stakeholders during the development of the HRY Alternative, noted they complied with the notice procedures set forth in the

PSL, and that additional notice was provided by the Administrative Law Judges.

With respect to the comments about HDD, the Applicants explained that cofferdams and pipes are not proposed for the cable entry and exit points to be installed using HDD. In addition, they noted that because the HDD crossings are from land to land, there will be no disturbance of potentially contaminated riverbed sediments.

In response to the comments concerning EMFs, the Applicants explained that the Certificated Project was deemed compliant with applicable EMF standards with the proposed upland cable burial depth of four feet and that the expected magnetic field strength at the ground surface with the newly proposed burial depth of at least an additional two feet is expected to be even lower.

With respect to NAMRA's comments regarding the lack of noise studies, the Applicants noted that the proposed HRY Alternative was developed in consultation with NYC Parks Department staff and was sited away from quieter areas of the Park to avoid noise impacts. The Applicants have committed to limiting construction to off-peak periods at the Park and no ongoing noise impacts associated with post-construction operations are expected.

In response to NAMRA's comments concerning wetlands and water resources, the Applicants explained that while some temporary impacts on vegetation will occur during construction, they are required to revegetate any disturbed areas in accordance with the Project's Best Management Practices (BMPs). In addition, they noted that the proposed HRY Alternative is not within any salt marsh features, no disturbance is expected to occur along the shoreline, and erosion and sediment control

measures will be in place during construction, in accordance with the BMPs.

The Applicants further note that no T&E species are located within 1,000 feet of the Project route and species identified by NAMRA are on the opposite side of Randall's Island. As the Project will be located on previously disturbed upland areas, the Applicants note that it is unlikely that T&E habitat will be disturbed by the HRY Alternative.

The Applicants responded to the comments about potential visual impacts by noting that the long-term visual and aesthetic impacts are comparable to the originally certified route and, because the cables will be buried, no permanent impacts are expected. Routing was planned in consultation with the NYC Parks Department staff in order to avoid impacts to existing plantings. Visual impacts during construction will be temporary and are comparable to those anticipated at other locations along the Project route.

With respect to the NAMRA's comments concerning the Coastal Consistency analysis provided with the Amendment Petition, the Applicants provided a response to each specific Policy requirement and explained how they were either not applicable or were addressed in the existing administrative record. In addition, they noted that due to the use of land-to-land HDD technology, there would be no resuspension of sediments, no impacts on aquatic systems or fisheries were anticipated, and they would be required to employ BMPs to avoid risks of impacts to water quality.

Rockland County Groups and Individuals

A representative of a citizens group, Stony Point Action Committee For The Environment (SPACE), and residents of Rockland County submitted comments largely in opposition to the Project as a whole, but also raised issues related to the

Rockland County Adjustment. SPACE noted concerns about blasting impacts, particularly along Route 9W near the Helen Hayes Hospital; EMFs; concerns about traffic impacts during construction and the lack of updated DOT maps and traffic study plans; and whether the Applicants would acquire property for splice locations by eminent domain.

As noted below, the Applicants are currently negotiating easements for the private property needed for the proposed splice locations. While one splice location is to the north and one is to the south of the hospital property, construction of the splice locations is not expected to impact the two access roads to the hospital. The Applicants have not requested amendments of any applicable Certificate Conditions and are required to follow all such terms and conditions of the original Certificate, including conditions regarding EMF limits. In addition, no blasting is proposed for construction along Route 9W. The final Facility design and details of traffic control plans and construction methods are subject to additional detailed plans to be included in the EM&CP that will be subject to public notice, review and comment pursuant to the Certificate Order and Certificate Conditions.

LEGAL AUTHORITY

PSL §122(4) provides that “[a]n application for an amendment of a certificate shall be in such form and contain such information as the commission shall prescribe. Notice of such an application shall be given as set forth in subdivision two.” In addition, under PSL §123(2), “[o]n an application for an amendment of a certificate, the commission shall hold a hearing in the same manner as a hearing is held on an application for a certificate if the change in the facility to be authorized would result in any material increase in any

environmental impact of the facility or a substantial change in the location of all or a portion of such facility other than as provided in the alternates set forth in the application.”

Because the proposed route modifications to the certificated Project will not result in any material increase in environmental impacts and the proposed modifications to the previously certificated route of the Project will not result in a substantial change in the location of all or a portion of the Project, no hearing is required for the Amendment 3 Petition.

DISCUSSION

The Applicants seek approval of certain modifications to the certified Project layout. The modifications include minor routing changes in NYC and Rockland County. Through this Order the Commission approves the requested routing modifications.

In their Amendment 3 Petition, the Applicants noted the public benefits of the Project that were contained in the Certificate, including that it would “advance major energy and policy goals” of both the State and New York City,⁶ and would, through the import of “renewable energy,” increase supply diversity and enhance system reliability, provide “price stability benefits,” and provide a “substantial environmental benefit” by reducing emissions.⁷ According to the Applicants, any delay of the approval of the Amendment 3 Petition would jeopardize the ability to close on financing for the construction of the Project, which could delay the in-service date by at least one year.

⁶ Amendment 3 Petition, p. 2 (citing Certificate Order, p. 97).

⁷ Id., pp.2-3 (citing Certificate Order, pp. 98, 52).

A detailed description of the two proposed changes is provided in the Amendment 3 Petition and discussed below.

Harlem River Yard Alternative

The Amendment 3 Petition identifies a modification to the portion of the certified route in the HRY in New York City. The proposed route would deviate approximately 1,200 feet south of the certified route to bypass the HRY entirely. As described in the Amendment 3 Petition, the HRY, which is owned by the NYS Department of Transportation (NYSDOT), "is a heavily congested commercial area on the southern waterfront of the Bronx adjoining the Mott Haven and Port Morris neighborhoods." It houses many industrial and commercial facilities, some of which operate 24 hours per day, as well as railroad facilities that connect rail lines along the Hudson and Harlem Rivers to the Long Island Sound. The HRY also contains three major bridges supported by massive piers. In addition, the HRY contains extensive aging above-ground and buried infrastructure, such as sewers, water supply pipes, telecommunication cables, and gas and electric mains. Due to the level of congestion and associated engineering challenges, and in consultation with affected HRY stakeholders, the Applicants assessed alternative routes.

After a lengthy consultation process with the representatives of the NYC Mayor's office, the NYC Parks Department, and impacted NYC agencies, the HRY alternative was proposed with the support of NYC. The HRY alternative is located entirely within NYC, largely within the borough of Manhattan. The Project cable will be installed under Randall's Island Park at already disturbed areas (i.e., roadway and paved pathways), to avoid impacts to recreational uses including ballfields, and HDD will be utilized to avoid impacts at crossings of the Bronx Kill and East River waterways along this

route in order to avoid impacts to natural resources and river navigation.

The Applicants state that the modifications in New York City are needed to be consistent with "Good Utility Practice Mandate" imposed by the Certificate Order and to "minimize impacts to stakeholders including HRY transportation-based businesses and their employees during construction,"⁸ and to address engineering challenges associated with installing cables under continuously-operating above-ground commercial facilities. As noted above, the proposed HRY alternative has been endorsed by NYC and the Applicants have indicated that they have initiated the application process to "enter into a revocable consent agreement to allow placement of the cables under Randall's Island."⁹ No significant increase in environmental impacts is anticipated by construction and operation of the Facility due to adoption of this alternative location.

Rockland County Adjustment

The Amendment 3 Petition identifies a minor location shift from the authorized ADZ in Rockland County that would allow five splice vault locations to be located on private land adjacent to the Route 9W ROW, rather than in the active ROW. This change would allow for longer deployable cable lengths, thereby reducing the number of splice vault locations in this section of the route from 16 to 7. Five of the proposed splice locations would be relocated from the active roadway ROW to immediately adjoining private properties (primarily commercial area parking lots) for which easements are being negotiated.

⁸ Id., p. 5.

⁹ Id., p. 7.

According to the Applicants, this change was proposed to address concerns raised by the NYSDOT and would reduce traffic impacts along Route 9W during construction. Because the cable would primarily be installed in previously disturbed and already developed areas, or in areas where the quality of habitat is non-existent or low, the changed splicing locations should avoid and/or minimize environmental impacts. As noted above, the affected Rockland County Towns and Villages have submitted letters in support of the proposed modification.

The proposed modifications are reasonable. They are not expected to result in any significant increase in adverse environmental impacts and may result in reducing expected environmental impacts. In addition, they have the support of the affected municipalities because they avoid or minimize impacts to traffic, disruption to businesses and river navigation. Accordingly, the amendments to the certificated route described in the Amendment 3 Petition are approved.

The Commission further notes that the modifications to the Certificate approved herein may create some potential inconsistencies between aspects or locations of certain Project facilities as shown on the newly revised maps included in the Amendment 3 Petition and the narrative descriptions of such facilities as they appear in the following Certificate Conditions: 1 (general route description); and 2 (reference to Appendix B maps). For the avoidance of inconsistencies, those narrative descriptions are to be deemed updated and amended as may be necessary in order to conform them to the relevant As-built Design Drawings to be filed pursuant to Certificate Condition 139(b) following construction.

CONCLUSION

Based on the foregoing, the Commission approves the amendments to the certificated route described in the Amendment 3 Petition, subject to the conditions below.

The Commission Orders:

1. Champlain Hudson Power Express, Inc.'s and CHPE Properties, Inc.'s (Certificate Holders) Certificate of Environmental Compatibility and Public Need shall be amended pursuant to PSL §123(2) to include the modifications to the Allowed Deviation Zone in New York City and in Rockland County as described in its Petition to Amend Certificate of Environmental Compatibility and Public Need and this Order.

2. Certificate Holders shall follow all applicable terms and conditions of the original Certificate of Environmental Compatibility and Public Need and subsequent amendments thereto, unless superseded by this Order.

3. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary