

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on October 13, 2022

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
Diane X. Burman
James S. Alesi
Tracey A. Edwards
John B. Howard, dissenting
David J. Valesky
John B. Maggiore

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 APPROVING ENVIRONMENTAL MANAGEMENT
AND CONSTRUCTION PLAN FOR SEGMENTS 1 AND 2
SUBJECT TO CONDITIONS

(Issued and Effective October 13, 2022)

BY THE COMMISSION:

INTRODUCTION AND BACKGROUND

On April 18, 2013, the Public Service Commission
(Commission) issued a Certificate of Environmental Compatibility
and Public Need (CECPN or Certificate)¹ to Champlain Hudson Power

¹ Case 10-T-0139, Order Granting Certificate of Environmental
Compatibility and Public Need (issued April 18, 2013) (CECPN
Order).

Express, Inc. and CHPE Properties, Inc. (Certificate Holder).² The Certificate authorizes the construction, operation, and maintenance of a High Voltage, Direct Current (HVDC) transmission line extending approximately 330 miles from the New York/Canada border to a converter station in Astoria, Queens known as the Champlain Hudson Power Express Project (Project or Facility) pursuant to the requirements of Article VII of the Public Service Law (PSL). Since its approval in 2013, the Commission has approved six amendments to the Certificate (a seventh amendment petition is pending).³

The Certificate Conditions contain several requirements for compliance, including a requirement that the Certificate Holder submit for public review and Commission approval an Environmental Management & Construction Plan (EM&CP) detailing the Facility design, construction and maintenance plans, and environmental controls in accordance with the EM&CP Guidelines set forth in Appendix E to the Certificate.⁴ The Certificate provides flexibility for the Certificate Holder to develop the Facility in segments in order to facilitate

² For the purposes of this Order, "Certificate Holder" represents both past and current Certificate Holders. In August 2020, CHPEI 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).

³ See Order Granting Amendment of Certificate of Environmental Compatibility and Public Need Subject to Conditions (issued March 16, 2022) (discussion of the six amendments, pp. 3 - 6).

⁴ CECPN Order, Certificate Conditions 6, 7, and 145 through 164.

construction sequencing and scheduling.⁵ As such, the Project, as proposed and subsequently authorized by the Commission, is being divided into several overland and marine segments which will be contained in separate design packages in the EM&CP filings for the Project.

The Certificate Holder filed its proposed Segments 1 and 2 EM&CP on April 15, 2022, and filed a supplement on August 19, 2022. On September 21, 2022, the Certificate Holder refiled the revised Segments 1 and 2 EM&CP. This Order only pertains to EM&CP Segments 1 and 2, as described in the Certificate Holder's first EM&CP filing, which covers approximately 17.6 miles of the overland Facility route for the proposed construction and installation of the conduit for the transmission line from the Town of Putnam to the Town of Whitehall.

More specifically, Segment 1 covers the installation of conduit and cables spanning approximately 7.4 miles from the western shore of Lake Champlain in Putnam Station along County Route 3 and Lake Road to its intersection with New York State Route 22. The cables will continue within the Route 22 road right-of-way (ROW) to the end of Segment 1 approximately 895 feet south of the center of the intersection between Route 22 and Dresden Road. Segment 2 covers approximately 10.2 miles starting at the end of Segment 1 and following Route 22 until Bellamy Street. The alignment follows Bellamy Street approximately 320 feet until the start of Segment 3. All other construction proposed to occur along the remainder of the Facility route will be covered in subsequent EM&CP filings, as set forth in the Table 1.1 schedule presented in the Segments 1 and 2 EM&CP filing.

⁵ Id., Certificate Condition 6.

PUBLIC NOTICE

The Certificate Holder submitted its proposed Segments 1 and 2 EM&CP filing for approval on April 15, 2022, filed a supplement on August 19, 2022, and refiled the revised Segments 1 and 2 EM&CP on September 21, 2022. Public Notice of the EM&CP filings for review and comment was served on each party on the Service List and on residents, businesses, and building, structure, and facility owners and, to the extent known, operators of the same when such land uses are located within one hundred (100) feet of the horizontal directional drilling (HDD) staging areas, off-ROW construction access roads, and the overland components of the Facility, relevant railroads and owners of Co-located Infrastructure whose facilities, properties, and/or structures within the geographic scope of that portion of the EM&CP that may be impacted and made available at the public repositories listed on the Service List, in accordance with Certificate Conditions 151 through 155. As further required by Certificate Conditions 153 and 155, the Certificate Holder published notice in two local newspapers of general circulation. In accordance with Certificate Conditions 153 and 155, on May 4, 2022, and September 29, 2022, the Certificate Holder filed affidavits of service and proofs of publication. In addition, the Certificate Holder posted the Segments 1 and 2 EM&CP on its Project website.

The 30-day comment period, required by Certificate Condition 155(a)(8), ended on May 15, 2022. Five public comments have been received since the filing of the Segments 1 and 2 EM&CP on April 15, 2022. None of the public comments pertain to the portions of the Project covered by the Segments 1 and 2 EM&CP that is the subject of this Order. Any pertinent comments previously submitted, and any additional comments

received, will be addressed during the review of the relevant future EM&CP segments.

Staff of the Department of Public Service (DPS Staff), the Department of Environmental Conservation (NYSDEC), the Department of Agriculture and Markets (NYSAGM), and the Department of Transportation (NYSDOT) all provided informal comments and recommendations and took part in technical meetings with the Certificate Holder. The agencies' comments were subsequently addressed by the Certificate Holder in its September 21, 2022 Segments 1 and 2 EM&CP filing. No comments from community members, the various Parties, or affected municipalities have been received at this time.

This Order approves the EM&CP for Segments 1 and 2 so that the Certificate Holder may begin construction of Segments 1 and 2 of the transmission facility, pursuant to the Certificate.

THE EM&CP, COMMENTS AND RESPONSES

As filed on September 21, 2022, the Certificate Holder's revised Segments 1 and 2 EM&CP provides both typical and site-specific techniques, procedures, and requirements to be followed in development of the Project by the Certificate Holder to ensure environmental protection. The Segments 1 and 2 EM&CP identifies and defines the scope of work involved for Segments 1 and 2; construction access; protective measures for streams, wetlands, threatened and endangered species, agricultural lands, cultural resources, scenic resources, and recreational areas; and the Certificate Holder's organizational framework to ensure implementation of the EM&CP. The standards for the EM&CP are described in the Joint Proposal and its appendices, particularly the Certificate Conditions (Appendix C of the Certificate), EM&CP Guidelines (Appendix E of the Certificate) and the Best Management Practices (BMPs) (Attachment F to the Certificate).

Project Energy Deliverability Report

As a condition precedent to filing the first EM&CP, Certificate Condition 15(a) requires the Certificate Holder to file a report (Deliverability Report) for Commission approval demonstrating that the Project can deliver a minimum of 1,550 MW of energy (including 550 MW of energy not flowing through the HVDC Transmission System) out of the New York Power Authority's Astoria substation. On May 14, 2021, the Commission approved a petition filed by the Certificate Holder to increase the capacity of the Project from 1,000 to 1,250 MW, thereby increasing delivery from the Astoria Station to 1,800 MW.⁶

The Certificate Holder initially filed a Deliverability Report on December 22, 2021, to demonstrate that the Project will allow for delivery into the grid a minimum of 1,800 MW from the Astoria substation. After the New York Independent System Operator completed its Class-Year 2021 System Deliverability Upgrade (SDU) Report showing that the Project does not result in the need for the addition of SDUs, the Certificate Holder's consultant, Siemens PTI, updated the original Deliverability Report, which was filed on August 26, 2022. DPS Staff reviewed the original and updated Deliverability Reports and advises that the Certificate Holder has complied with Condition 15(a).

Allowed Deviation Zone

The CECPN Order approved a Facility route, which is depicted on a series of maps included in Appendix B of the Joint Proposal showing a nominal centerline and an Allowed Deviation Zone (ADZ). In the event that construction work is proposed to

⁶ Case 10-T-0139, Order Granting Amendment of Certificate of Environmental Compatibility and Public Need Subject to Conditions (issued May 14, 2021).

be outside of the approved ADZ, Certificate Condition 156 allows for limited exceptions "for appropriate environmental and engineering reasons" provided they are "the minimum extent necessary" and are detailed and justified in the EM&CP. Certificate Condition 157 further provides that all "deviations from the design depth, height, and location of facilities or structures shall be presented in the proposed EM&CP for approval." The Certificate Holder is required to submit an explanation for the proposed deviations with supporting documentation. Certificate Condition 157 further provides that "[d]eviations shall be allowed for appropriate environmental or engineering reasons without modification to this Certificate, except where a conflict with a specific provision of this Certificate would be created."

Pursuant to Certificate Condition 157, the Certificate Holder submitted a "Justification for Excursions Outside the Deviation Zone" as Appendix E to its initial Segments 1 and 2 EM&CP filing on April 15, 2022. On September 21, 2022, the Certificate Holder submitted a "Revised Deviation Zone Justification" as Appendix E to the Segments 1 and 2 EM&CP for a proposed deviation of the Facility route in Segment 1.

According to the Certificate Holder, all trenching activities and HDD work will be located within the ADZ with the exception of two parcels adjacent to the Lake Road crossing in the Town of Putnam, as described in Section 1.3 and Appendix E of the revised Segments 1 and 2 EM&CP (the "Lake Road HDD Crossing"). As explained by the Certificate Holder, the additional area (approximately 28,780 square feet of permanent easement and 44,100 square feet of temporary easement) is required due to physical limitations (weak soils and insufficient length for the HDD bore path) for the proposed HDD.

The Certificate Holder indicated that it has secured an option agreement with the owners of both parcels of land outside of the ADZ, which will be provided to DPS Staff after they are recorded.

No additional permanent environmental, agricultural, or cultural impacts are expected from construction of the Lake Road HDD Crossing. The proposed deviation will avoid impacts to wetlands and streams by inadvertent returns of drilling fluids. Any impacts to agricultural land will be temporary and disturbed soils will be returned to pre-existing conditions in accordance with the BMPs for agricultural land impacts. The Lake Road HDD Crossing will not result in additional impacts to terrestrial ecology or threatened and endangered species or habitat. The Certificate Holder also claims the deviation will minimize impacts to traffic during HDD installation because the work area will be outside of Lake Road.

DPS

DPS Staff reviewed the Segments 1 and 2 EM&CP and provided informal comments, took part in technical meetings, and provided recommendations to the Certificate Holder and its consultants. DPS Staff suggested revisions to culvert/construction plans, and the Plan and Profile designs as well as other parts of the EM&CP such as the locations of vulnerable soils and the status of land rights acquisition. In addition, Staff requested revisions or clarification on subject areas including tree clearing, proposed grading, Wetland and Waterbodies Tables, and the Gordon Road substation drawings. While DPS Staff agrees with the locations of facilities and the proposed plan, Staff advised the Certificate Holder that some of the line style and symbology was not clear on the hard copies of

the Plan and Profile drawings, and the Certificate Holder worked with Staff to address the clarity of the physical drawings.

DPS Staff also reviewed the Supplemental Cultural Resources Management Plan (CRMP) included as Appendix O of the Segments 1 and 2 EM&CP, and provided comments to the Certificate Holder recommending certain revisions to the Supplemental CRMP in order to reflect consistency with the applicable sections of the BMPs. The Certificate Holder included a modified Supplemental CRMP as Appendix O of the revised Segments 1 and 2 EM&CP filed on September 21, 2022, which partially addressed Staff's comments. On September 29, 2022, the Certificate Holder filed a revised Supplemental CRMP, adequately resolving all of Staff's concerns.

Further, DPS Staff consulted with the New York State Office of Parks, Recreation and Historic Preservation (OPRHP), State Historic Preservation Office (SHPO), regarding the SHPO's review of the Segments 1 and 2 EM&CP, including the Supplemental CRMP. By letter dated August 18, 2022, the SHPO issued a conditional determination that no historic properties, including archaeological and/or historic resources, will be adversely affected by the Segments 1 and 2 construction activities. SHPO's conditional determination required a geophysical survey to be completed at the crossing of South Bay and reviewed by a maritime archaeologist. On September 29, 2022, the Certificate Holder filed the results of the required geophysical survey with the Secretary. SHPO received the revised Supplemental CRMP and results of the required geophysical survey on October 4, 2022.

NYSDEC

NYSDEC Staff reviewed the Segments 1 and 2 EM&CP and provided informal comments and recommendations and took part in technical meetings with the Certificate Holder and its

consultants. NYSDEC Staff suggested revisions to the EM&CP Plan and Profile designs and other parts of the EM&CP. These suggestions included, but were not limited to, blasting, rare threatened and endangered species, wetland and waterbody delineation, culvert replacement, the Project's stormwater management, and the Project's invasive species plan.

It is advised that the Certificate Holder adequately addressed all of NYSDEC Staff's comments in the September 21, 2022 revised Segments 1 and 2 EM&CP.

NYSAGM

NYSAGM Staff reviewed the Segments 1 and 2 EM&CP and provided informal comments and recommendations and took part in technical meetings with the Certificate Holder and its consultants. NYSAGM Staff suggested revisions to the EM&CP Plan and Profile designs and other parts of the EM&CP. These suggestions included, but were not limited to, access road type and location, topsoil stripping, depth of facility, temporary agricultural fencing, agricultural operator crossing design detail of such crossings and drain tile identification and repair.

It is advised that the Certificate Holder adequately addressed all of NYSAGM Staff's comments in the September 21, 2022 revised Segments 1 and 2 EM&CP.

NYSDOT

NYSDOT Staff reviewed the Segments 1 and 2 EM&CP and provided informal comments, took part in technical meetings, and made recommendations to Certificate Holder and its consultants. On October 3, 2022, NYSDOT filed a letter stating that it concurs with the final alignment of the transmission lines within State Route 22 in the Towns of Putnam, Dresden, and

Whitehall and supports Commission approval of the Segments 1 and 2 EM&CP. In addition, it states that the Certificate Holder is in the process of securing NYSDOT work permits for construction of Segments 1 and 2 outside of the Article VII process.

DISCUSSION AND CONCLUSION

As noted above, DPS Staff, NYSDEC Staff, NYSDAM Staff, and NYSDOT Staff raised various concerns and suggestions regarding the details of the proposed Segments 1 and 2 EM&CP. The Certificate Holder incorporated the agencies' feedback prior to its September 21, 2022 EM&CP filing. In addition, the updated "Overland and Rock Removal Plan"⁷ (containing an overland blasting plan with additional pre-blast survey and notification procedures for known eagle nest locations) and Cultural Resources Management Plan⁸ filed on September 30, 2022, address additional concerns raised by NYSDPS and NYSDEC.

Upon review, DPS Staff advises that the revised Segments 1 and 2 EM&CP complies with the applicable Certificate Conditions, and adheres to the EM&CP Guidelines and BMPs included as Appendix E and Attachment F to the Certificate, respectively. In addition, DPS, NYSDEC, and NYSAGM staffs agree that the Lake Road HDD Crossing revision to the ADZ, described above, minimizes environmental and agricultural impacts and the overall character of the Facility will not be changed. DPS Staff further advises the Commission that in order for the Certificate Holder to meet its construction schedule, the Certificate Holder requested approval of its Segments 1 and 2 EM&CP filing as soon as possible.

⁷ Segments 1 and 2 EM&CP, Appendix S.

⁸ Id., Appendix O.

Upon review, the Commission finds that the Certificate Holder has adequately addressed the concerns raised by DPS, NYSDEC, NYSAGM, and NYSDOT staffs. Based on a review of all the documents submitted, responses received, and supplemental filings made by the Certificate Holder, the revised Segments 1 and 2 EM&CP for the Project is approved.

The Commission orders:

1. The Environmental Management and Construction Plan for Segments 1 and 2 submitted by Champlain Hudson Power Express, Inc. and CHPE Properties, Inc. (Certificate Holder) on April 15, 2022, and supplemented on August 19, 2022, September 21, and September 30, 2022, is approved subject to the following conditions.

2. In accordance with Certificate Condition 15(a), the Deliverability Report submitted by the Certificate Holder on December 22, 2021, and updated on August 26, 2022, is approved.

3. The proposed revision to the Allowed Deviation Zone for the Lake Road HDD Crossing in Segment 1 is approved.

4. The Certificate Holder shall schedule construction activities on the Project ROW to occur between the hours of 7:00 a.m. through 7:00 p.m. Monday through Saturday, except no work is allowed on federal or state holidays. If, due to safety, planned outage restrictions, or continuous operation requirements, such construction activities are required to occur on a Sunday or holiday after 7:00 p.m. (Extended Work), the Certificate Holder, after consultation with the affected municipality, shall seek approval from Department of Public Service (DPS) Staff for Extended Work. To the maximum extent practicable, such approval shall be requested at least 24 hours in advance.

5. The Certificate Holder is required to obtain and provide concurrence of revised wetland delineations for Segments 1 and 2 from the U.S. Army Corps of Engineers to DPS Staff prior to the start of construction.

6. The Certificate Holder shall not commence construction until it has received a "Notice to Proceed with Construction" letter sent by the Chief of Environmental Certification and Compliance of the Office of Electric, Gas and Water or by a designee.

7. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary