

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Petition of CHPE LLC and CHPE Properties,
Inc., to Amend Certificate of Environmental
Compatibility and Public Need.

Case: 10-T-0139

**PETITION OF CHPE LLC AND CHPE PROPERTIES, INC., TO AMEND
CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED**

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Dated: December 6, 2021

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INTRODUCTION

On April 18, 2013, the New York State Public Service Commission (the “Commission”) issued to Champlain Hudson Power Express, Inc. and CHPE Properties, Inc. (the “Certificate Holders”) a Certificate of Environmental Compatibility and Public Need (“Certificate”), pursuant to Article VII of the Public Service Law (“PSL”), to construct and operate the Champlain Hudson Power Express Project (the “Project”).¹

The Certificate requires that Certificate Holders establish the Hudson River and Lake Champlain Habitat Enhancement, Restoration, and Research/Habitat Improvement Project Trust (“the Trust”) “for the purposes of protecting, restoring, and improving aquatic habitats and fisheries resources in the Hudson River Estuary, the Harlem and East Rivers, Lake Champlain, and their tributaries, in order to minimize, mitigate, study, and/or compensate for the short-term

¹ The Commission originally issued the Certificate to Champlain Hudson Power Express, Inc. (“CHPEI”) and CHPE Properties, Inc. In August 2020, CHPEI converted from a corporation 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*, Order Approving Transfers (July 17, 2020).

adverse aquatic impacts and potential long-term aquatic impacts and risks to these water bodies from Facility construction and operation and for the administration of the Trust to the extent expressly authorized in these Certificate Condition.”² The Certificate Conditions further provide that Certificate Holders endow the Trust with an initial amount within 30 days after the date upon which the transactions to fund the costs of the Project are completed (the “Closing”) with the next contribution due within one month of the Commercial Operation Date (“COD”).

Since the original Certificate was issued in 2013, Certificate Holders have reconsidered Trust funding and believe that providing greater Trust contributions during the four-year construction period, allowing for more significant and near-term implementation of Trust projects/studies in the Hudson River, Harlem River, East River or Lake Champlain, will better fulfill the purposes and goals of the Trust. The Governance Committee voted to accept Certificate Holders’ proposal and unanimously adopted a Resolution that authorizes Certificate Holders to take all actions necessary to accelerate Trust funding (a copy of the Resolution is attached as Exhibit 1). This Resolution increases available funding from \$2.5 Million between Closing and the COD (construction years) to \$15 Million during construction years. Accordingly, Certificate Holders hereby petition the Commission to amend the Certificate Conditions to increase funding accordingly with minor adjustments to annual contributions in years following COD (years 4 through 35).³

² Certificate Condition 165.

³ The relief sought herein presents neither a material increase in any environmental impact nor a substantial change to the location of the Project facilities. Therefore, The Commission retains the discretion to act on this Application without scheduling a hearing (PSL §123[2]).

Notice of this petition has been provided as required by § 122(2) of the Public Service Law (the “PSL”) and the Commission’s rules.⁴

DISCUSSION

In support of their request for an amendment, the Applicants state as follows:

1. On March 30, 2010, the Applicants submitted the original Certificate application (the “Original Application”), which led to a three-year process that culminated in the issuance of the Order granting the Certificate (the “CECPN Order”).⁵ The Applicants carried their burden of demonstrating that the Project would serve the public interest, convenience, and necessity, and the Commission made all the findings that, by statute, must accompany issuance of a certificate pursuant to Article VII of the PSL (PSL §126). Furthermore, during the process leading up to the eventual CECPN Order, the Applicants successfully built a coalition of affected parties, and that coalition produced the joint proposal of settlement (the “JP”) that formed the basis of the Commission’s favorable decision.

2. The Certificate Conditions require that Certificate Holders establish the Trust for the purposes of protecting, restoring, and improving aquatic habitats and fisheries resources in the Hudson River Estuary, the Harlem and East Rivers, Lake Champlain, and their tributaries (the “Waterbodies”). The Trust resulted from collaborative discussions among the Signatory Parties to the JP and provides exclusively for in-water mitigation studies and projects that have a direct nexus to the construction and operation of the Facility. These studies and projects will minimize,

⁴ See also 6 NYCRR § 85-2.10; Affidavits of Service and Affidavits of Publication will be filed under separate cover.

⁵ 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 (April 18, 2013), at 100.

mitigate, study or compensate for the short-term adverse aquatic impacts and potential long-term aquatic impacts and risks to these waterbodies from construction and operation of the Facility.

3. The following parties, signatories to the JP, agreed to serve on the Governance Committee of the Trust: (1) NYS Department of State, (2) CHPE LLC and CHPE Properties, Inc; (3) NYS Department of Public Service; (4) NYS Department of Environmental Conservation; (5) City of New York; (5) Adirondack Park Agency; (6) Trout Unlimited; (7) Scenic Hudson; and (8) Riverkeeper. The operation of the Trust is governed by the Governance Committee in accordance with the terms and conditions of the Certificate, the JP, and the Governance Agreement.

4. The Certificate provides that Certificate Holders will supply \$117 million in funds over a thirty-five (35) year-period to establish and maintain the Trust for the benefit of the waterbodies.

5. Certificate Condition 165(b) sets forth the initial amounts Certificate Holders must make to fund the Trust and Table 2 (contained within Condition 165) summarizes the annual funding amounts for 35 years following the Closing. With respect to the initial funding amount, Certificate Condition 165 provides that “[w]ithin thirty (30) days of the Closing, the Certificate Holders shall endow the Trust with an interest-bearing account established at the Trustee bank, with a first payment of \$2.5 million.”

6. Certificate Holders believe that providing greater Trust contributions up front, allowing for more significant and near-term implementation of Trust projects/studies in the Waterbodies, will better fulfill the purposes and goals of the Trust.

7. At a special meeting of the Governance Committee, duly held on November 10, 2021, with sufficient Governance Committee Members in attendance to constitute a quorum,⁶ the Governance

⁶ Pursuant to the Governance Agreement, a Special Meeting may be called by giving not less than three (3) days’ notice to all Governance Committee Members.

Committee determined that acceleration of contributions to the Trust as detailed in the Trust Proposal Table (attached to Exhibit 1) will enhance restoration, research, and improvement efforts. As shown in the Trust Proposal Table, Trust contributions during the period between Closing and COD will increase from \$2.5 million to \$15 million. Total Trust contributions for the first three years following COD increase by \$50,000 with small reductions made for years 4 through 35. The total Trust contributions remain at \$117 million, as required by the Certificate.

8. The Governance Committee memorialized this determination in the attached Resolution authorizing Certificate Holders to take any action necessary, including filing of this petition, to accelerate Trust funding.

CONCLUSION

9. For the reasons set forth herein, CHPE, LLC and CHPE Properties, Inc. respectfully request that the Certificate be amended as specified above.

DATED: December 6, 2021

Respectfully submitted

Young / Sommer LLC
*Attorneys for CHPE LLC and CHPE
Properties, Inc.*

/s/ Steven D. Wilson

William S. Helmer, Esq.
Executive Vice President and General Counsel
Transmission Developers, Inc.
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Exhibit 1

Resolution to Amend Schedule of Payments to Hudson River
and Lake Champlain Habitat Enhancement, Restoration,
and Research/Habitat Improvement Project Trust – 11/10/2021 Special meeting

GOVERNANCE COMMITTEE RESOLUTION

APPROVING MODIFICATIONS TO TRUST FUNDING

WHEREAS, in recognition of the ecological significance of the watersheds of Lake Champlain, and the watersheds of the Hudson, Harlem and East Rivers, the Certificate provides that Certificate Holders will supply \$117 million in funds over a thirty-five (35) year-period to establish and maintain the Hudson River and Lake Champlain Habitat Enhancement, Restoration, and Research/Habitat Improvement Project Trust (the “Trust”) for the benefit of these waterbodies;

WHEREAS, annual payments and the nature of the contributions to the Trust are governed by Condition 165 of the Certificate of Environmental Compatibility and Public Need (“Certificate”) issued by the Public Service Commission on April 20, 2013;

THEREFORE BE IT RESOLVED:

That the Governance Committee has determined that acceleration of contributions to the Trust as detailed in the Trust Proposal Table will enhance restoration, research and improvement efforts; and

That the Governance Committee authorizes Certificate Holders to take all actions necessary to accelerate contributions to the Trust, as set forth in the table attached hereto, including but not limited to amending Condition 165 of the Certificate;

We, the undersigned, hereby certify that the Governance Committee is comprised of nine (9) members of whom 9, constituting a quorum, were present at a special meeting duly called, noticed and convened and held this 10th day of November 2021, and that the foregoing Resolution was duly adopted at said meeting by affirmative vote of 9 Committee Members, and opposed by 0 Committee Members, and that said Resolution has been duly recorded in the minutes and is in full force and effect.

Committee Member

Committee Member

Committee Member

Committee Member

Committee Member

Committee Member

Committee Member

Committee Member

Committee Member

Committee Member

Resolution to Amend Schedule of Payments to Hudson River
and Lake Champlain Habitat Enhancement, Restoration,
and Research/Habitat Improvement Project Trust – 11/10/2021 Special meeting

For: Certificate Holder

WILLIAM S. HELMER

Name (print)

William S. Helmer

Name (Signature)

12/1/2021

Date

Resolution to Amend Schedule of Payments to Hudson River
and Lake Champlain Habitat Enhancement, Restoration,
and Research/Habitat Improvement Project Trust – 11/10/2021 Special meeting

For: NYS Department of Public Service

Heather Behnke

Name (print)



Name (Signature)

November 18, 2021

Date

Resolution to Amend Schedule of Payments to Hudson River
and Lake Champlain Habitat Enhancement, Restoration,
and Research/Habitat Improvement Project Trust – 11/10/2021 Special meeting

For: NYS Department of Environmental Conservation

Sita Crounse

Name (print)



Name (Signature)

11/22/2021

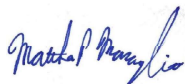
Date

Resolution to Amend Schedule of Payments to Hudson River
and Lake Champlain Habitat Enhancement, Restoration,
and Research/Habitat Improvement Project Trust – 11/10/2021 Special meeting

For: NYS Department of State

Matthew P. Maraglio

Name (print)



Name (Signature)

12/02/2021

Date

Resolution to Amend Schedule of Payments to Hudson River
and Lake Champlain Habitat Enhancement, Restoration,
and Research/Habitat Improvement Project Trust – 11/10/2021 Special meeting

For: Adirondack Park Agency

__Terry Martino_____

Name (print)

Terry Martino

Name (Signature)

_11/24/21_____

Date

Resolution to Amend Schedule of Payments to Hudson River
and Lake Champlain Habitat Enhancement, Restoration,
and Research/Habitat Improvement Project Trust – 11/10/2021 Special meeting

For: The City of New York

Robert Loughney

Name (print)

Robert Loughney

Name (Signature)

12-2-21

Date

Resolution to Amend Schedule of Payments to Hudson River
and Lake Champlain Habitat Enhancement, Restoration,
and Research/Habitat Improvement Project Trust – 11/10/2021 Special meeting

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NYS Department of State
Planning and Development

For: NYS Council of Trout Unlimited

William H Wellman

Name (print)

William H Wellman

Name (Signature)

21 Nov 2021

Date

Resolution to Amend Schedule of Payments to Hudson River
and Lake Champlain Habitat Enhancement, Restoration,
and Research/Habitat Improvement Project Trust – 11/10/2021 Special meeting

For: Scenic Hudson, Inc.

Hayley Carlock

Name (print)



Name (Signature)

12/3/2021

Date

Resolution to Amend Schedule of Payments to Hudson River
and Lake Champlain Habitat Enhancement, Restoration,
and Research/Habitat Improvement Project Trust – 11/10/2021 Special meeting

For: RiverKeeper, Inc.

R. Webster

Name (print)

R. Webster

Name (Signature)

12/3/2021

Date

Resolution to Amend Schedule of Payments to Hudson River
and Lake Champlain Habitat Enhancement, Restoration,
and Research/Habitat Improvement Project Trust – 11/10/2021 Special meeting

**CHAMPLAIN HUDSON POWER EXPRESS
ENVIRONMENTAL TRUST FUND PAYMENTS
PROPOSAL**

CHPE**Environmental Trust Fund Payments**

Period		Permitted	Proposed	Variance
Financial Close		\$2,500,000	\$2,500,000	\$0
Construction Yr.	1	\$0	\$3,125,000	\$3,125,000
	2	\$0	\$3,125,000	\$3,125,000
	3	\$0	\$3,125,000	\$3,125,000
	4	\$0	\$3,125,000	\$3,125,000
Operations Yr.	1	\$7,210,000	\$7,200,000	(\$10,000)
	2	\$2,150,000	\$2,200,000	\$50,000
	3	\$2,190,000	\$2,200,000	\$10,000
	4	\$2,240,000	\$2,000,000	(\$240,000)
	5	\$7,810,000	\$6,900,000	(\$910,000)
	6	\$2,140,000	\$1,900,000	(\$240,000)
	7	\$3,330,000	\$2,900,000	(\$430,000)
	8	\$2,230,000	\$2,000,000	(\$230,000)
	9	\$3,470,000	\$3,000,000	(\$470,000)
	10	\$2,320,000	\$2,000,000	(\$320,000)
	11	\$3,610,000	\$3,200,000	(\$410,000)
	12	\$2,410,000	\$2,100,000	(\$310,000)
	13	\$3,750,000	\$3,300,000	(\$450,000)
	14	\$2,510,000	\$2,200,000	(\$310,000)
	15	\$3,900,000	\$3,400,000	(\$500,000)
	16	\$2,610,000	\$2,300,000	(\$310,000)
	17	\$2,660,000	\$2,300,000	(\$360,000)
	18	\$2,710,000	\$2,400,000	(\$310,000)
	19	\$2,770,000	\$2,400,000	(\$370,000)
	20	\$2,820,000	\$2,500,000	(\$320,000)
	21	\$2,880,000	\$2,500,000	(\$380,000)
	22	\$2,940,000	\$2,600,000	(\$340,000)
	23	\$3,000,000	\$2,600,000	(\$400,000)
	24	\$3,060,000	\$2,700,000	(\$360,000)
	25	\$3,120,000	\$2,700,000	(\$420,000)
	26	\$3,180,000	\$2,800,000	(\$380,000)
	27	\$3,240,000	\$2,800,000	(\$440,000)
	28	\$3,310,000	\$2,900,000	(\$410,000)
	29	\$3,370,000	\$3,000,000	(\$370,000)
	30	\$3,440,000	\$3,000,000	(\$440,000)
	31	\$3,510,000	\$3,100,000	(\$410,000)
	32	\$3,580,000	\$3,100,000	(\$480,000)
	33	\$3,650,000	\$3,250,000	(\$400,000)
	34	\$3,730,000	\$3,350,000	(\$380,000)
	35	\$3,800,000	\$3,350,000	(\$450,000)
Total		\$117,150,000	\$117,150,000	\$0