

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on February 17, 2022

COMMISSIONERS PRESENT:

Rory M. Christian, Chair  
Diane X. Burman, dissenting  
James S. Alesi  
Tracey A. Edwards  
John B. Howard  
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 GRANTING AMENDMENT OF CERTIFICATE OF ENVIRONMENTAL  
COMPATIBILITY AND PUBLIC NEED SUBJECT TO CONDITIONS

(Issued and Effective February 17, 2022)

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 Certificate Holders),<sup>1</sup> 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 kilovolt (kV) AC cable within the streets of Astoria, Queens to a point-of-interconnection with the Consolidated Edison Company of New York, Inc.'s (Con Edison) Rainey substation (the Astoria-Rainey cable); (altogether the Certificated Project or Facility) pursuant to Public Service Law (PSL) Article VII.<sup>2</sup>

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. As certified, and amended, the Project will have the capacity to transmit up to 1,250 megawatts (MWs) of electricity into the New York City load pocket. It is

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<sup>1</sup> For the purposes of this Order, "Certificate Holders" 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).

<sup>2</sup> Case 10-T-0139, Order Granting Certificate of Environmental Compatibility and Public Need (issued April 18, 2013) (Certificate Order).

anticipated that the electricity transmitted by the Project will be primarily hydroelectric power.

As described more fully below, over the past two years, the Certificate Holders obtained four Commission-approved Certificate amendments related to certain Certificate conditions and route modifications. On January 29, 2021, the Certificate Holders filed a petition, pursuant to Section 123(2) of the PSL, to further amend the Certificate (Amendment 5 Petition). In the Amendment 5 Petition, the Certificate Holders initially sought authorization for two additional modifications to the certified Project: (1) a new interconnection point (IP) and converter station to be built in the Town of New Scotland; and (2) changes to the configuration of the High Voltage Alternating Current (HVAC) interconnection between the Project's converter station in Astoria, Borough of Queens (the Astoria Converter Station) and the IP located at the Astoria Annex Substation owned and operated by the New York Power Authority (NYPA) (the Astoria IP) (referred to herein as the Astoria HVAC Connection). On November 5, 2021, the Certificate Holders withdrew their request for approval to build the new IP and converter station in the Town of New Scotland.

Through this Order, the Commission approves the requested Amendment 5 Petition with respect to the Astoria HVAC Connection, 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 Certificate Holders 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 Certificate Holders filed a petition for a third amendment to the Certificate (Amendment 3 Petition) on October 9, 2020, seeking approval of proposed modifications to two portions of the certified Project layout. The first requested modification sought 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 second requested modification sought 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 Amendment 3 Petition was granted on January 26, 2021.

On January 29, 2021, the Certificate Holders filed a petition for a fourth amendment to the Certificate (Amendment 4 Petition) seeking authorization to increase the capacity of the Project from 1,000 MW to 1,250 MW with associated modifications to the Project's transmission components and to increase the footprint of the Astoria converter station. In addition, in a Supplement to the Amendment 4 Petition filed on March 24, 2021, the Certificate Holders requested clarification of Certificate Condition 22(a) regarding the 100-year floodplain. The Amendment 4 Petition was granted on May 14, 2021.

The Certificate Holders filed the Amendment 5 Petition on June 4, 2021. On December 23, 2021, Chief Administrative Law Judge, Dakin D. Lecakes, issued a "Ruling on Process,"<sup>3</sup> which held that a hearing was not required because the proposed modifications would not result in any material increase in any environmental impact of the Facility and would not result in a substantial change in the location of the Project. Judge Lecakes noted that although some comments made during the Public Statement Hearing "did specifically focus on the inclusion of the converter station to be built in the Town of New Scotland," he concluded that those comments were "no longer relevant in

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<sup>3</sup> This ruling was subsequent to the Certificate Holder's withdrawal of the request to add a converter station in the Town of New Scotland.

light of the Certificate Holders' withdrawal of that proposal."<sup>4</sup> Consequently, Judge Lecakes found no additional litigation process was required and "the matter may proceed to the Commission for final determination."<sup>5</sup>

NOTICE AND PUBLIC COMMENTS

A "Notice Seeking Public Comment" was issued on September 14, 2021, which requested public comments by November 1, 2021. Hardcopies of the Amendment 5 Petition were mailed to parties as required by PSL §122(2) and pursuant to 16 NYCRR §85-2.10(c). The Amendment 5 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 5 Petition. On July 9, 2021, in accordance with the Commission's Rules at 16 NYCRR §85-2.10(c), the Certificate Holders provided seven Affidavits of Publication of the Notice of Application to Amend the Certificate issued by the Commission on April 18, 2013, relating to their Amendment 5 Petition.

On September 23, 2021, a "Notice of Public Statement Hearing" to be held in the afternoon and evening of October 20, 2021, was issued. The Notice provided that "[a]lthough comments will be accepted throughout the pendency of this proceeding, they are requested by November 1, 2021."

After the Amendment 5 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, impacts to the Hudson River, and the need for a new Environmental Impact Statement). A few individuals

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<sup>4</sup> Ruling on Process (issued December 23, 2021), p. 2.

<sup>5</sup> Id., p. 4.

commented on the proposed new IP and converter station to be built in the Town of New Scotland, but as noted above, Judge Lecakes found that those comments are no longer relevant due to the withdrawal of that proposal by the Certificate Holders. Numerous letters in support of the Project as a whole were filed by members of the Laborers International Union of North America. None of the comments submitted in opposition specifically address the proposed changes to the Astoria HVAC Connection in the Amendment 5 Petition.

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 Astoria HVAC Connection modifications to the certificated Project will not result in any material increase in environmental impacts and 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 5 Petition.<sup>6</sup>

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<sup>6</sup> Ruling on Evidentiary Hearing, p. 3.

DISCUSSION

Certificate Condition 26 states that “[t]he Converter Station shall have a 345 kV underground Gas Insulated Line connection to the Astoria Annex GIS Substation installed in duct banks.” The Certificate Holders state that when they submitted their Amendment 2 Petition for approval to move the Astoria Converter Station site from the proposed Luyster Creek converter station site to a preferred location in the Astoria Complex (Preferred Converter Station Site), “it was assumed, based on available information and discussions at the time, that the Astoria HVAC Connection could and would remain underground.”<sup>7</sup> However, Certificate Holders state that after technical discussions with Con Edison, the owner of the property through which the Astoria HVAC Connection must cross, “an underground design is no longer feasible”<sup>8</sup> due to concerns associated with existing buried infrastructure (including a high-pressure natural gas supply line, facility water distribution mains, and underground electrical feeders serving several mission critical facilities) along the proposed pathway.<sup>9</sup>

Consequently, the Certificate Holders now seek approval to reconfigure the Astoria HVAC Connection at the Preferred Converter Station Site, with an overhead line. The proposed reconfiguration requires installing an overhead double-circuit 345 kV transmission line for approximately 1,730 feet, suspended on six steel poles approximately 130 feet in height. While the Astoria HVAC Connection is proposed to be located within the ADZ within the Astoria Complex, the Certificate

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<sup>7</sup> Amendment 5 Petition, p. 4.

<sup>8</sup> Id.

<sup>9</sup> Id., p. 11.



Holders request a minor increase in the ADZ to accommodate potential minor shifts in the pole locations.<sup>10</sup>

In their Amendment 5 Petition, the Certificate Holders noted the environmental impacts of the Project were thoroughly reviewed by the Commission prior to its issuance of the Certificate.<sup>11</sup> As discussed in the Amendment 5 Petition and below, the environmental impacts of the reconfigured Astoria HVAC Connection are expected to be similar in nature to those of the previously approved Preferred Converter Station Site.

#### Land Use

Because the overhead cables will be on the same parcel that has been historically used for utility-related land uses which is zoned M3-1 for heavy manufacturing-industrial uses, the installation of the overhead cables should be consistent with state and local land use plans and policies.

#### Geology, Topography, and Soils and Vegetation and Natural Communities

The impacts to geology, topography and soils are expected to be reduced because installation of the overhead cables will require less ground disturbance. Similarly, the installation of overhead instead of underground cables should not result in any different impacts to vegetation and natural communities because they are located on urban property.

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<sup>10</sup> Id., Appendix C,

<sup>11</sup> Id., p. 14.

Wetlands and Water Resources, Aquatic Systems, Fisheries, Wildlife and Threatened and Endangered Species

In their Amendment 5 Petition, the Certificate Holders indicate that no impacts to wetlands or waterbodies, nearby aquatic systems, fisheries and wildlife, or threatened and endangered species are expected.<sup>12</sup>

Historic and Archaeological Resources

Upon review of the Certificate Holders' Phase 1A archaeological resource study for the converter station location, the New York State Office of Parks, Recreation, and Historic Preservation found that no further studies were required based on the historic disturbance at the site. The Certificate Holders have developed a Cultural Resources Management Plan which includes procedures for unanticipated discoveries during Project construction.<sup>13</sup>

Visual

The Certificate Holders had a Visual Impact Analysis Report prepared to evaluate the potential for publicly accessible ground-level point-of-view visual impacts of the overhead cables within a 0.75-mile radius from the project area.<sup>14</sup> While the analysis showed the overhead structures would be visible along some portions of 20<sup>th</sup> Avenue and some points along street corridors, the impact of the six proposed poles would be minimal given the already visible similar height transmission structures and other infrastructure (including

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<sup>12</sup> Id., pp. 37-38.

<sup>13</sup> Id., p. 38.

<sup>14</sup> Id., Appendix H.

exhaust stacks) on the Astoria Complex site.<sup>15</sup> Consequently, no significant adverse visual and aesthetic impacts are anticipated.

#### Noise

Noise impacts resulting from overhead versus underground construction are expected to be similar. Expected impacts will be limited to construction noise, which will be temporary in nature.

#### Public Health

Public health impacts are expected to be limited because the Con Edison property on which the Astoria HVAC Connection will be constructed is gated and inaccessible to the public. The Certificate Holders evaluated the HVAC electric and magnetic field (EMF) for the new overhead double-circuit connection and found that EMF levels would be consistent with Commission policy.<sup>16</sup>

#### Transportation

Due to the proximity of LaGuardia Airport to the Astoria Complex, we will require the Certificate Holders to file a "Notice of Proposed Construction or Alteration" if required by the Federal Aviation Administration (FAA) prior to construction of the Astoria HVAC Connection and to provide copies of any final FAA Determinations to the Secretary prior to installation

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<sup>15</sup> Id., Appendix H, p.17.

<sup>16</sup> Id., p. 36; see Cases 26529 and 26559, Statement of Interim Policy on Magnetic Fields of Major Electric Transmission Facilities, (issued September 11, 1990) in PSC Reports, Vol. 30, Part 3A, 1990; 1990 N.Y. PUC LEXIS 47.

of components requiring such FAA "Notice of Proposed Construction or Alteration" filings.

CONCLUSION

The proposed reconfiguration of the Astoria HVAC Connection is reasonable. It is not expected to result in any significant increase in adverse environmental impacts and it is preferred by the property owner. Accordingly, the amendment to the Astoria HVAC Connection described in the Amendment 5 Petition is approved. That aspect of the Amendment 5 petition pertaining to the request to build a converter station in the Town of New Scotland was withdrawn by the Certificate Holders and is therefore not addressed herein.

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 modified by amending the language in Certificate Condition 26 to read as follows:

"26. The Converter Station shall have a 345 kV connection to the Astoria Annex GIS Substation."

2. If required by the Federal Aviation Administration (FAA), Certificate Holders shall file a FAA "Notice of Proposed Construction or Alteration" prior to construction of the Astoria HVAC Connection and provide copies of any final FAA Determinations to the Secretary prior to installation of components requiring such FAA "Notice of Proposed Construction or Alteration" filings.

3. Certificate Holders' request to approve the overhead reconfiguration and amend Certificate Condition 26 is approved consistent with the discussion in the body of this Order. Certificate Holders shall follow all applicable terms and conditions of the original Certificate and subsequent amendments, unless superseded by this Order.

4. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS  
Secretary