

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on March 16, 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, concurring

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 March 16, 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),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 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.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 Facility'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 Certificated Project will have the capacity to transmit up to 1,250 megawatts (MWs) of electricity into the New York City load pocket. It is

¹ 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).

² 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 Certificated Project will be primarily hydroelectric power.

As described more fully below, over the past three years, the Certificate Holders obtained five Commission-approved Certificate amendments related to certain Certificate conditions and route modifications. On December 6, 2021, the Certificate Holders filed a petition, pursuant to Section 123(2) of the PSL, to further amend the Certificate (Amendment 6 Petition). In the Amendment 6 Petition, the Certificate Holders seek authorization to amend Certificate Condition 165 to approve acceleration of the \$117 million funding required to be made to the Hudson River and Lake Champlain Habitat Enhancement, Restoration, and Research/Habitat Improvement Project Trust (Trust).

Through this Order, the Commission approves the requested Amendment 6 Petition, pursuant to PSL §123(2).

BACKGROUND

The Certificate Holders 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 Certificate Holders 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 a petition for a fifth amendment (Amendment 5 Petition) on June 4, 2021, seeking authorization for changes to the configuration of the High Voltage Alternating Current (HVAC) interconnection between the Project's converter station in Astoria, Borough of Queens and the interconnection point (IP) located at the Astoria Annex Substation owned and operated by the New York Power Authority (Astoria HVAC Connection).³ The proposed changes included reconfiguration of the Astoria HVAC Connection from an underground to an overhead double-circuit 345 kV transmission line. The Amendment 5 Petition was granted on February 17, 2022.

On December 6, 2021, the Certificate Holders filed the Amendment 6 Petition seeking to amend Certificate Condition 165 to accelerate the schedule of the payments of the \$117 million funds to the Trust for the first four years of construction with reductions in later years of the 35-year funding schedule, which is set forth in Table 2 within Certificate Condition 165. Under

³ The Certificate Holders also sought approval to construct a new IP and converter station in the Town of New Scotland but withdrew their request on November 5, 2021.

the accelerated schedule, the Certificate Holders would increase their contributions during the period between the date upon which the transactions to fund the costs of the Certificated Project are completed (Closing) and the commercial operation date (COD) from \$2.5 million to \$15 million. This would also result in a \$50,000 increase in contributions for the first three years following COD and small reductions in payments for years 4 through 35. The total Trust contributions would not change from the \$117 million total required by the Certificate.

According to the Certificate Holders, this acceleration of payments is warranted because it advances the goals of the Trust and will provide more significant and near-term implementation of Trust projects and studies in the Hudson River Estuary, the Harlem and East Rivers, Lake Champlain, and their tributaries (the Waterbodies). Further, it is fully supported by the Governance Committee of the Trust,⁴ which executed a Resolution authorizing the Certificate Holders to "take all actions necessary to accelerate contributions to the Trust."⁵ The Amendment 6 Petition includes a proposed Environmental Trust Fund Payment Schedule that compares the schedule of funding set forth in Table 2 of Certificate

⁴ The Trust Governance Committee consists of: Certificate Holders; Department of Public Service (DPS) Staff; NYS Department of Environmental Conservation; NYS Department of State; City of New York; Adirondack Park Agency; the New York State Council of Trout Unlimited; Riverkeeper, Inc.; and Scenic Hudson, Inc.

⁵ Amendment 6 Petition, Exhibit 1 "Governance Committee Resolution Approving Modifications to Trust Funding" approved unanimously on November 10, 2021.

Condition 165 and the schedule approved by the Governance Committee.⁶

NOTICE AND PUBLIC COMMENTS

A "Notice Seeking Public Comment" was issued on January 27, 2022, which requested public comments by February 15, 2022. Hardcopies of the Amendment 6 Petition were mailed to parties as required by PSL §122(2) and pursuant to 16 NYCRR §85-2.10(c). The Amendment 6 Petition was also served via email on active parties to this proceeding in conjunction with its filing of the Amendment 6 Petition. On February 16, 2022, in accordance with the Commission's Rules at 16 NYCRR §85-2.10(c), the Certificate Holders provided six Affidavits of Publication of the Notice of Application to Amend the Certificate issued by the Commission on April 18, 2013, and filed a seventh Affidavit of Publication on February 25, 2022, relating to their Amendment 6 Petition.

After the Amendment 6 Petition was filed, several groups and individuals submitted comments, the majority of which oppose the Project as a whole due to potential impacts to the environment and Indigenous peoples of Canada, as well as the cost to upstate New Yorkers. Those in favor of the Project note the benefits of providing clean energy in furtherance of the Climate Leadership and Community Protection Act, the partnership with the Mohawk of Kahnawake in Quebec, and the creation of green jobs. Numerous letters in support of the Project as a whole were filed by members of the Laborers International Union of North America and the International Union of Operating Engineers (IUOE) Local 14-14b and IUOE Local 137 because of the vast

⁶ Id., Exhibit 1, "Champlain Hudson Power Express Environmental Trust Fund Payments Proposal."

number of union jobs the Project will generate. One comment has been submitted on behalf of the New York State Council of Trout Unlimited in support of the Amendment 6 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.”

Inasmuch as the Amendment 6 Petition related to Condition 165 does not propose any change in the location of the facility or involve any material increase in any environmental

impact, no hearing is required.⁷

DISCUSSION AND CONCLUSION

Certificate Condition 165 states that the Trust was established "solely 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 adverse aquatic impacts and potential long-term aquatic impacts and risks to these water bodies from Facility construction and operation" To facilitate the goals of the Trust, Certificate Condition 165 requires the Certificate Holders to provide \$117 million in funds over a 35-year period. Certificate Condition 165(b) sets forth the initial amounts Certificate Holders must make to fund the Trust and includes a Table (Table 2) with a

⁷ See, e.g., Case 08-T-0034, Application of Hudson Transmission Partners, LLC for a Certificate of Environmental Compatibility and Public Need for a 345 kV Submarine/Underground Electric Transmission Link Between Manhattan and New Jersey, Order Granting Amendments to Certificate of Public Convenience and Necessity (issued November 3, 2011) and Order Approving Certificate Amendments and Directing Compliance (issued January 12, 2017); Case 02-T-0036, Application of Neptune Regional Transmission System LLC for a Certificate of Environmental Compatibility and Public Need for the Construction of two 600 megawatt (+/- 500 kV) High-voltage Direct Current Submarine/Underground Electric Transmission Cables - Petition to Amend Opinion and Order Issued January 23, 2004, filed by Neptune Regional Transmission System LLC, Order Granting Amendment of Certificate of Environmental Compatibility and Public Need (issued August 26, 2005), p. 4 (finding that an amendment to a certificate condition does not require a hearing where the proposed amendment "will not result in any material increase in any environmental impact or a substantial change in the location of the transmission facility.")

schedule of annual funding amounts that the Certificate Holders must make to fund the Trust for the 35-year period following Closing.

The Certificate Holders request amendment of Certificate Condition 165 to permit the acceleration of payments to the Trust. In their Amendment 6 Petition, Certificate Holders noted that the Trust Committee had determined that acceleration of contributions to the Trust as detailed in the Trust Proposal Table⁸ will enhance restoration, research, and improvement efforts for the projects and studies for the Waterbodies, as required by Certificate Condition 165, and that it had executed a Resolution authorizing Certificate Holders to take any action necessary, including filing of this petition, to accelerate Trust funding.⁹

As noted above, although numerous public comments were submitted after the Amendment 6 Petition was filed, only one of the comments pertained to the relief requested by the Certificate Holders. That comment was submitted by the Hydro Chairman of the Council of Trout Unlimited in support of accelerating the payments to the Trust because it will enable urgently needed and unfunded habitat and conservation projects to proceed at a more rapid pace in order to ameliorate the serious threats to the terrestrial and aquatic environment surrounding Lake Champlain and its environs, as well as the Hudson River Corridor and New York Harbor.

Accordingly, because the Amendment 6 Petition is consistent with the purposes of the Trust, is fully supported by the Trust Committee, and will not result in any change in the

⁸ Amendment 6 Petition, Exhibit 1, "Champlain Hudson Power Express Environmental Trust Fund Payments Proposal."

⁹ Amendment 6 Petition, pp. 5 - 6.

location of the facility or involve any material increase in any environmental impact, the Amendment 6 Petition is approved, and the Champlain Hudson Power Express Environmental Trust Fund Payments Proposal attached as Exhibit 1 to the Amendment 6 Petition is hereby adopted.

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 to include the changes to Certificate 165 described in its Petition to Amend Certificate of Environmental Compatibility and Public Need filed on December 6, 2021, and this Order.
2. Certificate Holders shall follow all applicable terms and conditions of the original Certificate and subsequent amendments, unless superseded by this Order.
3. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary