BEFORE THE
PUBLIC SERVICE COMMISSION
STATE OF NEW YORK

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.	Case No. 10-T-0139

PETITION OF CHPE, LLC AND CHPE PROPERTIES, INC. FOR AN AMENDMENT TO CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED

I. INTRODUCTION

CHPE, LLC and CHPE Properties, Inc. (collectively, "CHPE"), by submitting this Petition ("Petition") to the New York State Public Service Commission (the "Commission"), seek an amendment to the Certificate of Environmental Compatibility and Public Need issued in this proceeding on April 18, 2013 (the "Certificate").[1] The Certificate authorizes CHPE to build, maintain, and operate the Champlain Hudson Power Express Project (the "Project"). Notice of this Petition to amend has been provided as required by § 122(2) of the Public Service Law (the "PSL") and the Commission's rules. *See* 16 NYCRR § 85-2.10.[2]

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[1] On July 16, 2020, the Commission approved the transfer of the Certificate from Champlain Hudson Power Express, Inc. ("CHPEI") to CHPE, LLC. In August 2020, Champlain Hudson Power Express, Inc. converted from a corporation (CHPEI) to a limited liability company (CHPE LLC) and transferred 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 (July 17, 2020).

[2] Affidavits of Service and Affidavits of Publication are being filed under separate cover.

Since the Certificate was issued, CHPE has worked diligently to obtain the additional governmental permits and approvals necessary in order to fully and finally authorize construction and operation of the Project, to conduct outreach and coordination efforts directed at interested stakeholders, to finalize the commercial arrangements that will allow for Project financing, and to refine the Project construction program with a view towards further minimization of Project impacts. On April 15, 2022, CHPE filed its first Environmental Management and Construction Plan ("EM&CP") for the first segment of the Project.

CHPE is continuing detailed Project design and engineering in connection with the preparation and submittal of additional EM&CP filings in 2022 and 2023. During the course of additional EM&CP preparation, CHPE has identified a certain Certificate Condition which is unduly and unnecessarily burdensome. The Project, as proposed in 2010, was based on a preliminary project design, an approach that is within the latitude afforded by Article VII of the PSL. It would not have been possible at that time to anticipate each and every issue that would arise during final/detailed design and engineering and to draft Certificate Conditions that fully comprehend the realities of the Project construction, appropriate environmental protections, and the public interest. The ultimate balance can only be struck in the context of the EM&CP process.

CHPE hereby petitions the Commission for a minor amendment to Certificate Condition 114 as it pertains to refueling. As written, this condition creates significant limitations at horizontal directional drilling ("HDD") locations, and poses potential negative environmental impacts to sensitive resources which could be avoided by revising the Condition as written.

The proposed amendment does not alter any findings made by the Commission in issuing the Certificate and, for the reasons set forth below, its approval is in the public interest. In addition, the proposed amendment does not present either a material increase in any environmental impact

or a substantial change to the location of the Project facilities. Therefore, the Commission retains the discretion to act on this Petition without scheduling a hearing (PSL §123[2]).[3]

I. BACKGROUND

As described more fully in the Record of this proceeding and in prior Certificate amendments, the Petitioners submitted the original Certificate application (the "Original Application") on March 30, 2010 and initiated a three-year process that culminated with the issuance of the Order of April 18, 2013. The Petitioners carried their burden of demonstrating that the Project would serve the public interest, convenience, and necessity, and the Commission made all of the findings that, by statute, must accompany issuance of a certificate pursuant to Article VII of the PSL (*see* PSL §126). Furthermore, during that process leading to issuance of the 2013 Order, the Petitioners successfully built a coalition of affected parties, and, after a significant and productive process, that coalition produced the joint proposal of settlement that formed the basis of the Commission's favorable decision (the "Joint Proposal.[4]

With respect to the Project's public benefits, the 2013 Order took note of the Project's "unique and substantial benefits" and concluded that it would "advance major energy and policy goals" of both New York State (the "State") and the City of New York ("NYC").[5] The Commission also concluded that the Project would provide a "significant amount of additional

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[3] Case 15-T-0384: *Application of Petition to Amend Niagara Mohawk Power Corporation's, d/b/a National Grid, Certificate of Environmental Compatibility and Public Need Granted on September 4, 1986 in Case 70346 to Authorize Construction and Operation of a New 115 kV Three Ring Bus Station, Two 115 kV Transmission Loop Taps, and an All-dielectric Self-supporting Fiber Optic Cable in the Town of Fenner, Madison County.* (September 15, 2015), at 3 (stating "[n]o hearing is required by the Commission here since the proposed changes in the facility will not materially increase the environmental impacts or substantially change the location of the facility.")

[4] 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 Certificate of Environmental Compatibility and Public Need (April 18, 2013)(hereinafter "2013 Order").

[5] *2013 Order*, at 100.

capacity that would enhance energy security" in NYC and, through the import of "renewable energy," would increase supply diversity and enhance system reliability.[6] In addition, the Commission noted that the Project would serve to facilitate proper functioning of the energy markets in the State and would afford "price stability benefits."[7] At the heart of the Commission's determination to grant the Certificate was the conclusion that "the Facility's expected emission reductions are a substantial environmental benefit, a benefit that is expected to be enduring."[8]

Since the commencement of the Clean Energy Standard ("CES") proceeding in 2015, the Commission has emphasized the need for increased deliveries of renewable energy to NYC. According to the Commission, "without displacing a substantial portion of the fossil fuel-fired generation that New York City currently relies upon" the statewide renewable energy mandates most recently codified in the Climate Leadership and Community Protection Act ("CLCPA") will be difficult to achieve.[9] "[A]bsent new transmission capacity, the addition of new upstate renewable developments will fail on its own to increase the penetration of renewable energy consumed in New York City to a level that enables statewide compliance" with renewable targets.[10]

A major step forward towards achievement of that goal was taken by the Commission through its establishment of a new "Tier 4 REC" within the Clean Energy Standard by its Order of October 15, 2020. Subsequently, on January 13, 2021, the New York State Energy Research and Development Authority ("NYSERDA") issued a solicitation of proposals to supply 1500 megawatts ("MWs") or possibly a greater amount of renewable energy delivered into NYC over

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[6] *Id.*, at 97.
[7] *Id.*, at 97.
[8] *Id.*, at 52.
[9] Case 15-E-0302: *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and Clean Energy Standard*, Order Adopting Modifications to the Clean Energy Standard (October 15, 2020), at 78.
[10] *Id.*

new transmission lines.[11] On September 20, 2021, Governor Kathy Hochul issued a press release announcing that the Project was one of two proposals selected by NYSERDA as part of the Tier 4 solicitation.

On April 14, 2022, the Commission issued an Order finding that NYSERDA's contracts supporting the Clean Path New York initiative and the Project met the requirements in the CES proceeding and were otherwise in the public interest. According to the Commission the two projects would: 1) collectively result in a significant displacement of fossil-fuel fired generation in New York City, and 2) deliver economic benefits to New York totaling $8.2 billion of investments in labor, materials, and development, including more than $460 million of investments in community benefits funds and the creation of approximately 10,000 jobs.[12] A significant portion of the $8.2 billion in economic benefits from the two projects would accrue to disadvantaged communities.[13] This includes the commitment to pay $189 million in community benefit funds for Hudson River and Lake Champlain restoration, support for disadvantaged communities, workforce development and job retraining for fossil industry workers, and capital improvements in host communities.[14] According to the Commission, "[d]isadvantaged communities have also incurred substantial public health impacts associated with air pollution in New York City. In this regard, the Petition notes that a significant portion of the public health benefits from air quality improvements, quantified as $2.8 billion across both projects, would accrue to disadvantaged communities in New York City that have been impacted disproportionately by emissions from combustion of fossil fuels."[15]

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[11] Purchase of New York Tier 4 Eligible Renewable Energy Certificates (RECs) Request for Proposals (RFP) No. T4RFP21-1 RFP Release Date: January 13, 2021.
[12] Tier 4 Order, at 32.
[13] *Id*.
[14] *Id*., at 32-33.
[15] *Id*., at 33.

Based on the foregoing, Certificate Conditions must be, when necessary and appropriate, recast so as to confirm the Commission's original findings and accomplish its undoubted intent without unduly impeding Project construction, and without themselves resulting in avoidable impacts to sensitive resources. Any delay in Project construction could:

- Frustrate State and NYC policy goals including the CLCPA and Tier 4 of the CES.
- Delay public health improvements in NYC communities. Reduction of fossil fuel pollutant emissions (*e.g.*, SO_x, NO_x, PM, *etc*.) emissions reductions is of critical importance to the government and residents of NYC, including Astoria, Queens, and the South Bronx. For example, in its comments in support of the Tier 4 contracts, NYC urged Commission approval of the Tier 4 contracts stating that "these Projects will reduce the need for in-City fossil-fueled power plants, which will result in lowered criterion pollutant emissions in New York City, helping to improve public health."[16]
- Delay in funding of community benefit programs. Payments for these programs are all tied to financial close.
- Delay economic benefits realized from investment/jobs and by localities in the form of tax revenues and other host community commitments. Petitioners have committed to provide support for disadvantaged communities, workforce development and job retraining for fossil industry workers, and capital improvements in host communities.
- Potential delay to achieve project Commercial Operations Date.
- Delay multiple public benefits associated with the addition of renewable energy to the State's portfolio.
- Delay additional in-City reliability.
- Delay in achieving in-City public health benefits. Most importantly, delays in construction will translate into delays in carbon emissions reductions.

II. PROPOSED AMENDMENT TO CERTIFICATE CONDITION 114

Certificate Condition 114 states, in relevant part:

[16] Case 15-E-0302: *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, NYC Comments on Tier 4 Contracts (Filed February 7, 2022).

> "The Certificate Holders shall minimize disruption to streams and waterbodies during construction, operation, and maintenance of the Facility. Measures to protect such streams and waterbodies from runoff and sedimentation during construction (other than installation of underwater cables in navigable waters) shall include:
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> (g) Prohibition during overland construction refueling of equipment, storage mixing, or handling of open containers of pesticides, chemicals labeled "toxic," or petroleum products, within one hundred (100) feet of a stream or waterbody or wetland. Field personnel and Contractors shall be trained in spill response procedures, including the deployment and maintenance of spill response materials."

As noted above, this Certificate Condition as written creates certain limitations at the HDD locations. In many locations, CHPE proposes to install the line using HDD installation methods to avoid impacts to wetlands, waterbodies, critical infrastructure, or other resources. An HDD installation requires continuous operations to complete—if equipment must be removed from the HDD area for refueling, the continuous operations will be disrupted, and there may be additional adverse impacts to these sensitive areas which the Certificate Holders are seeking to avoid by utilizing an HDD method. HDD installation typically requires a range of large construction equipment (e.g., drill rigs, reamers, trucks) that require fuel. Repeated entries and withdrawals of this equipment to refuel within a relatively small area will exacerbate ground disturbance, which could potentially result in physical disturbance of the very wetland or stream areas that the HDD installation is designed to protect, as well as potential erosion or runoff thereto, simply by virtue of having to repeatedly remove and reinstall the equipment. Thus, the application of Certificate Condition 114 as drafted to prohibit refueling of HDD equipment during construction subverts the objective of avoiding environmental impacts to wetlands and waterbodies and threatens to compromise the very environmental benefits that would otherwise be gained by utilizing an uninterrupted HDD installation sequence.

Instead of strictly applying this provision as written, CHPE proposes to adopt Certificate Condition language used in other transmission line cases to address this concern. The proposed modified language would allow for refueling of HDD equipment, subject to certain precautions and Best Management Practices articulated in the proposed language below, including use of secondary containment around equipment, use of drip pans during refueling and routine maintenance operations, and absorbent pad wrapped nozzles to catch drips from refueling at HDD locations. Such measures will obviate any risk of spill impacts. A similar approach has been used in recent Article VII Certificate Orders to ensure protection of wetlands and waterbodies, while allowing refueling of some equipment which necessarily must be closer than 100 feet from a wetland or waterbody.[17]

[17] See, e.g., *Order Granting Certificate of Environmental Compatibility and Public Need* in Case 20-T-0549, Application of New York Transco for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII of the New York Public Service Law to Construct, Operate and Maintain a New, Single-Circuit 12-mile Overhead 115kV Electric Transmission Line and Related Facilities In the Towns of New Windsor, Hamptonburgh, Blooming Grove, and Chester in Orange County (September 9, 2021) at Certificate Condition 140; *Order Adopting Joint Proposal* in Case 19-T-0684, Application of New York Transco LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII of the New York Public Service Law to Construct, Operate, and Maintain a New, Double-Circuit 54.5-Mile 345/115 Kilovolt Electric Transmission Line and Related Facilities Located in the Town of Schodack, Rensselaer County; the Towns of Stuyvesant, Stockport, Ghent, Claverack, Livingston, Gallatin, and Clermont in Columbia County; and the Towns of Milan, Clinton, and Pleasant Valley in Dutchess County (February 11, 2021) at Appendix C, Certificate Condition 140; *Order Granting Certificate of Environmental Compatibility and Public Need* in Case 18-T-0499, Application of NextEra Energy Transmission New York, Inc. for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII of the Public Service Law for the Construction of a 20 Mile 345 Kilovolt Transmission Line Located in the Town of Royalton, Niagara County, and the Towns of Alden, Newstead, Lancaster, and Elma in Erie County (June 16, 2020) at Certificate Conditions 147-48. *See also, Order Adopting Joint Proposal* in Case 19-T-0549, Application of LS Power Grid New York, LLC, LS Power Grid New York Corporation I, and the New York Power Authority for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII for Edic/Marcy to New Scotland; Princetown to Rotterdam Project. (January 21, 2021) at Appendix D, Condition 96(h) and (i); *Order Granting Certificate of Environmental Compatibility and Public Need* in Case 18-T-0207, Application of New York Power Authority for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII for the Rebuild of the Existing Moses-Adirondack 1&2 230 kV Transmission Lines Extending approximately 86 Miles from the Robert Moses Switchyard in the Town of Massena, St. Lawrence County to the Adirondack Substation in the Town of Croghan, Lewis County, New York ("Smart Path" Project)(November 14, 2019) at Condition 92(i).

CHPE respectfully requests that this Certificate Condition be revised as follows (with red indicating proposed new text, and strikeouts identifying proposed language to be removed from the Certificate):

> (g) ~~Prohibition during overland construction~~ In general, and to the maximum extent practicable, refueling of equipment, storage mixing, or handling of open containers of pesticides, chemicals labeled "toxic," or petroleum products, shall not be conducted within one hundred (100) feet of a stream or waterbody or wetland. Requirements for refueling within 100 feet of wetlands or streams will be allowed under certain circumstances identified below, subject to the practices set forth in the approved EM&CP.
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> (1) Refueling of hand equipment will be allowed within 100 feet of wetlands or streams when secondary containment is used. Secondary containment will be constructed of an impervious material capable of holding the hand equipment to be refueled and at least 110% of the fuel storage container capacity. Fuel tanks of hand-held equipment will be initially filled in an upland location greater than 100 feet from wetlands or streams in order to minimize the amount of refueling within these sensitive areas. Crews will have sufficient spill containment equipment on hand at the secondary containment location to provide prompt control and cleanup in the event of a release.
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> (2) Refueling of equipment will be allowed within 100 feet of wetlands or streams when necessary to maintain continuous operations and where removing equipment from a sensitive area for refueling would increase adverse impacts to the sensitive area. Fuel tanks of such equipment will be initially filled in an upland location greater than 100 feet from wetlands or streams in order to minimize the amount of refueling within these sensitive areas. Absorbent pads or portable basins will be deployed under the refueling operation. In addition, the fuel nozzle will be wrapped in an absorbent pad and the nozzle will be placed in a secondary containment vessel (e.g., bucket) when moving the nozzle from the fuel truck to the equipment to be refueled. All equipment operating within 100 feet of a wetland or stream will have sufficient spill containment equipment on board to provide prompt control and cleanup in the event of a release.
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> (3) Field personnel and Contractors shall be trained in spill response procedures, including the deployment and maintenance of spill response materials.

CHPE believes that these changes are minimal and that they will further its and the Commission's objectives of avoiding, minimizing, and mitigating environmental impacts to the maximum extent practicable by facilitating the efficient and effective use of HDD to avoid resource impacts and by

making HDD installations more feasible and less environmentally impactful than they would otherwise be if HDD equipment would need to be removed, refueled, and returned repeatedly to an HDD location.

III. CONCLUSION

For the reasons set forth herein, CHPE respectfully requests that the Certificate be amended as specified above.

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Respectfully submitted,

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