

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on December 15, 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 GRANTING AMENDMENT OF CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED SUBJECT TO CONDITIONS

(Issued and Effective December 15, 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

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, 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 (issued April 18, 2013).

(MWs) of electricity into the New York City load pocket. It is 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 six Commission-approved Certificate amendments related to certain Certificate conditions and route modifications. On September 7, 2022, the Certificate Holders filed a petition, pursuant to Section 123(2) of the PSL, to further amend the Certificate ("Amendment 7 Petition"). In the Amendment 7 Petition, the Certificate Holders seek to amend Certificate Condition 114 to allow refueling of equipment within 100 feet of a stream or wetland following a refueling protocol.

Through this Order, the Commission approves the requested Amendment 7 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 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 a petition for a sixth amendment ("Amendment 6 Petition") seeking to amend Certificate Condition 165 to accelerate the schedule of the payments 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"). The Amendment 6 Petition was granted on March 16, 2022.

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.

On September 7, 2022, the Certificate Holders filed the Amendment 7 Petition seeking to amend Certificate Condition 114 to allow refueling of horizontal drilling (HDD) equipment at HDD locations within 100 feet of wetlands and streams while following a refueling protocol. The Certificate Holders claim that because some installation requires continuous operations to complete, if equipment must be removed from a wetland for refueling, the continuous operations will be disrupted, which could result in additional adverse impacts to sensitive areas. Further, they claim the proposed changes are reasonable, have been adopted in other Article VII projects, and will not result in any significant increase in adverse environmental impacts.

NOTICE AND PUBLIC COMMENTS

A "Notice Soliciting Comments" was issued on October 27, 2022, which requested public comments by November 17, 2022. Hardcopies of the Amendment 7 Petition were mailed to parties as required by PSL §122(2) and pursuant to 16 NYCRR §85-2.10(c). The Amendment 7 Petition was also served via email on active parties to this proceeding in conjunction with its filing of the Amendment 7 Petition. On September 29, 2022, in accordance with the Commission's Rules at 16 NYCRR §85-2.10(c), the Certificate Holders provided Affidavits of Service and Affidavits of Publication of the Notice of the Petition to Amend the Certificate issued by the Commission on April 18, 2013, relating to their Amendment 7 Petition.

After the Amendment 7 Petition was filed, two public comments were submitted by individuals and one comment was submitted by the New York State Department of Environmental Conservation (NYSDEC). Neither of the comments filed by individuals pertain to the Amendment 7 Petition. One comment was specifically related to a Compliance Filing related to the

Trust and was addressed by the Commission in that order.⁴ The other comment submitted by an individual concerns evaluation of the use of insulated switchgear, which typically contains sulfur hexafluoride or SF6, in the Astoria substation. The use of SF6 will be evaluated during the review of the Environmental Management and Construction Plan (EM&CP) for the Astoria segment of the Project.

On November 15, 2022, NYSDEC filed comments generally in support of the Amendment 7 Petition. The NYSDEC comments are addressed below.

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 7 Petition related to Condition 114 does not propose any change in the location of the

⁴ Case 10-T-0139, Order Approving Second Compliance Filing (issued November 18, 2022), pp. 6-7.

facility or involve any material increase in any environmental impact, no hearing is required.⁵

DISCUSSION AND CONCLUSION

The Certificate Holders request amendment of Certificate Condition 114 to permit refueling of equipment within 100 feet of a wetland or stream under certain conditions. Currently, Certificate Condition 114 provides, in relevant part, that:

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:

- (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

⁵ 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, 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.")

deployment and maintenance of spill response materials.

In their Amendment 7 Petition, Certificate Holders claim that Condition 114(g) creates limitations at HDD locations. While the proposed use of HDD installation methods at certain locations is intended to avoid impacts to wetlands, waterbodies, critical infrastructure and other resources, imposing the Condition may have an unintended adverse effect. Because HDD installation requires continuous operations to complete, the Certificate Holders note that requiring equipment to be removed for refueling would disrupt the continuous operations, which could result in additional adverse impacts to the sensitive areas sought to be avoided by utilizing the HDD method. In addition, they note that HDD installation requires a range of large construction equipment that requires fuel and that repeated entries and withdrawals of such equipment could potentially exacerbate ground disturbance and could potentially result in physical disturbance of the wetland or stream areas the HDD installation is intended to protect.

In order to avoid the potential adverse impacts that could result from applying Condition 114(g) as written, the proposed amended Certificate Condition 114(g), as set forth below (with new text underlined and strikeouts denoting text to be removed), would allow for refueling of equipment, subject to certain precautions and Best Management Practices within 100 feet of wetlands and streams.

- (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.

- (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.
- (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.

- (3) Field personnel and Contractors shall be trained in spill response procedures, including the deployment and maintenance of spill response materials.

As noted above, NYSDEC submitted comments in support of the Amendment 7 Petition. NYSDEC noted that "while the amendment seeks authorization for activities not ordinarily acceptable to NYSDEC, in this instance, the Department has no objection to the amendments due to the unique circumstances surrounding this particular project." NYSDEC further recommended that refueling of mobile equipment within 100 feet of a stream or wetland should be avoided to the maximum extent practicable. In situations where such refueling is to occur, NYSDEC recommends procedures described in the Certificate and EM&CP should be followed. The Department of Public Service Staff advises that it agrees with NYSDEC's assessment and recommendations.

As revised, the proposed language will not result in any material increase in environmental impacts because it provides precautions and Best Management Practices, including the 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 operations, all of which are intended to obviate the risk of spill impacts. Similar conditions have been adopted in other

Commission approved Article VII Certificate Orders.⁶

Accordingly, because the changes sought to amend Certificate Condition 114(g) are reasonable and will not result in any change in the location of the facility or involve any material increase in any environmental impact, the Amendment 7 Petition is approved and the changes to Certificate Condition 114(g) as set forth above are 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 114(g) described in its Petition to Amend Certificate of Environmental Compatibility and Public Need filed on September 7, 2022, and in this Order.

2. Certificate Holders shall follow all applicable terms and conditions of the original Certificate and subsequent amendments, unless superseded by this Order.

⁶ See, e.g., 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 115 kV Electric Transmission Line and Related Facilities In the Towns of New Windsor, Hamptonburgh, Blooming Grove, and Chester in Orange County, Order Granting Certificate of Environmental Compatibility and Public Need (issued September 9, 2021) at Certificate Condition 140; and 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, Order Granting Certificate of Environmental Compatibility and Public Need (issued June 16, 2020) at Certificate Conditions 147-148.

3. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary