

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on May 18, 2023

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
Diane X. Burman
James S. Alesi
Tracey A. Edwards, recusing
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 APPROVING ENVIRONMENTAL MANAGEMENT AND CONSTRUCTION PLAN
FOR SEGMENT 3 SUBJECT TO CONDITIONS

(Issued and Effective May 18, 2023)

BY THE COMMISSION:

INTRODUCTION AND BACKGROUND

On April 18, 2013, the Public Service Commission
(Commission) issued a Certificate of Environmental Compatibility
and Public Need (CECPN or Certificate)¹ to Champlain Hudson Power
Express, Inc. and CHPE Properties, Inc. (CHPE or Certificate

¹ Case 10-T-0139, Order Granting Certificate of Environmental
Compatibility and Public Need (issued April 18, 2013) (CECPN
Order).

Holders).² The Certificate authorizes the construction, operation, and maintenance of a High Voltage, Direct Current (HVDC) transmission line extending approximately 330 miles from the New York/Canada border to a converter station in Astoria, Queens known as the Champlain Hudson Power Express Project (Project or Facility) pursuant to the requirements of Article VII of the Public Service Law (PSL). Since its approval in 2013, the Commission has approved seven amendments to the Certificate.

The Certificate Conditions contain several requirements for compliance, including a requirement that the Certificate Holders submit for public review and Commission approval an Environmental Management and Construction Plan (EM&CP) detailing the Facility design, construction and maintenance plans, and environmental controls in accordance with the EM&CP Guidelines set forth in Appendix E to the Certificate.³ The Certificate provides flexibility for the Certificate Holders to develop the Facility in segments in order to facilitate construction sequencing and scheduling.⁴ As such, as proposed and subsequently authorized by the Commission, the Project is being divided into several overland and marine segments which

² 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).

³ CECPN Order, Certificate Conditions 6, 7, and 145 through 164.

⁴ Id., Certificate Condition 6.

will be contained in separate design packages in the EM&CP filings.⁵

The Certificate Holders filed their proposed Whitehall to Fort Ann EM&CP (Segment 3 EM&CP) on December 23, 2022. On March 22, March 23, March 24, April 13, and May 10, 2023, the Certificate Holders filed revisions to the Segment 3 EM&CP. This Order only pertains to the Segment 3 EM&CP, as revised, which covers the construction and operation of the overland transmission cable in the Towns of Whitehall, Fort Ann, Kingsbury, and Hartford, and the Villages of Whitehall and Fort Ann (Washington County).

PUBLIC NOTICE

The Certificate Holders filed their proposed Whitehall to Fort Ann EM&CP (Segment 3 EM&CP) on December 23, 2022. On March 22, March 23, March 24, April 13, and May 10, 2023, the Certificate Holders filed revisions to the Segment 3 EM&CP. Public notice of the EM&CP filings for review and comment was served on each party on the Service List and on residents, businesses, and building, structure, and facility owners and, to the extent known, operators of the same when such land uses are located within one hundred feet of the HDD staging areas, off-right-of-way construction access roads, and the overland components of the Facility, relevant railroads and owners of co-located infrastructure whose facilities, properties, and/or structures are within the geographic scope of that portion of the EM&CP that may be impacted, and made available at the public repositories listed on the Service List, in accordance with Certificate Conditions 151 through 155. As further required by Certificate Conditions 153 and 155, the Certificate Holders

⁵ See Segment 3 EM&CP Narrative (filed December 23, 2022), Table 1.1 for a schedule of anticipated EM&CP filings.

published notice in two local newspapers of general circulation in the Towns where the proposed Segment 3 are located. In accordance with Certificate Conditions 153 and 155, on May 4, 2023, the Certificate Holders filed the affidavits of service and proofs of publication.

The 30-day comment period, required by Certificate Condition 155(a)(8), ended on January 22, 2023, for the Segment 3 EM&CP. One public comment pertinent to the Segment 3 EM&CP was received on December 28, 2022. Any comments previously submitted, and any additional comments received, that are pertinent to future EM&CP segments, will be addressed during the review of the relevant EM&CP filings.

Staff of the Department of Public Service (DPS Staff), the Department of Agriculture and Markets (NYSAGM) and the Department of Environmental Conservation (NYSDEC) provided informal comments and recommendations and took part in technical meetings with the Certificate Holders.

This Order approves the Segment 3 EM&CP, as revised, so that the Certificate Holders may begin construction of the Whitehall to Kingsbury portion of the overland transmission cable, pursuant to the Certificate.

THE EM&CP, COMMENTS AND RESPONSES

The Certificate Holders' Segment 3 EM&CP, as filed on December 23, 2022, and revised on March 22, March 23, March 24, April 13, and May 10, 2023, provides both typical and site-specific techniques, procedures, and requirements to be followed in development of the Project by the Certificate Holders to ensure environmental impacts avoidance, minimization, and mitigation. The Segment 3 EM&CP identifies and defines the scope of work relevant to this phase, including: construction access; protective measures for streams, wetlands, threatened

and endangered species, cultural resources, scenic resources, and recreational areas; and the Certificate Holders' organizational framework to ensure implementation of the EM&CP. The standards for the EM&CP are described in the Joint Proposal and its appendices, particularly the Certificate Conditions (Appendix C of the Certificate), EM&CP Guidelines (Appendix E of the Certificate) and the Best Management Practices (BMPs) (Appendix F to the Certificate).

Allowed Deviation Zone

The Certificate Order approved a Facility route, which is depicted on a series of maps included in Appendix B of the Joint Proposal showing a nominal centerline and an Allowed Deviation Zone (ADZ). In the event that construction work is proposed to be outside of the approved ADZ, Certificate Condition 156 allows for limited exceptions "for appropriate environmental and engineering reasons" provided they are "the minimum extent necessary" and are detailed and justified in the EM&CP. Certificate Condition 157 further provides that all "deviations from the design depth, height, and location of facilities or structures shall be presented in the proposed EM&CP for approval." The Certificate Holders are required to submit an explanation for the proposed deviations with supporting documentation. Certificate Condition 157 further provides that "[d]eviations shall be allowed for appropriate environmental or engineering reasons without modification to this Certificate, except where a conflict with a specific provision of this Certificate would be created." Pursuant to Certificate Condition 157, the Certificate Holders submitted "Justification for Excursions Outside the Deviation Zone" as Appendix E to the Segment 3 EM&CP Package 1C and 2 on

December 23, 2022, and as a revised filing for Package 2 on May 10, 2023.

According to the Certificate Holders, all work will be located within the ADZ for Segment 3, except for seven locations for Package 1C and fourteen locations for Package 2. The seven permanent deviations from the ADZ for Package 1C are separated into three horizontal directional drilling (HDD) locations and four open trench locations. The fourteen permanent deviations from the ADZ for Package 2 are separated into eight HDD locations and six open trench locations. The plan sheets with deviations from the ADZ for Package 1C and 2 are shown in Table 1.3 of the Segment 3 Narrative and Table 1 of Appendix E.

According to the justification provided by the Certificate Holders for Package 1C and 2, the justifications for the deviations from the ADZ regarding HDD locations are: limited space between the railroad (CP Rail) and the road; weak soils - a geotechnical analysis indicated that HDD pathways be increased in depth to prevent potential impacts to the wetlands and streams by inadvertent returns of drilling fluids; curvature; and to avoid conflicts with existing utilities and railroad operations. According to the justification provided by the Certificate Holders for Package 1C and 2, the justifications for the deviations from the ADZ regarding open trench locations are: steep slopes; stream locations adjacent to and within the vicinity of the alignment; and to avoid conflicts with existing utilities and railroad operations.

No significant increase in permanent environmental, agricultural, or cultural impacts are expected from the construction and operation of the 21 deviations presented in Package 1C and 2 of the Segment 3 EM&CP.

DPS Staff

DPS Staff reviewed the Segment 3 EM&CP and provided informal comments, participated in technical meetings, and provided recommendations to the Certificate Holders and its consultants. DPS Staff suggested revisions to the Plan designs as well as other parts of the EM&CP. In addition, Staff requested revisions or clarification on subject areas including critical infrastructure, soil disposal and management, restoration, traffic controls, and cultural resources.

The Commission is advised that DPS Staff's recommendations were adequately addressed and resolved in the revised Segment 3 EM&CP filed on March 22, March 23, March 24, April 13, and May 10, 2023.

NYSDEC

NYSDEC Staff reviewed the Segment 3 EM&CP and provided informal comments and recommendations and took part in technical meetings with the Certificate Holders and its consultants. NYSDEC Staff suggested revisions to the EM&CP Plan designs and other parts of the EM&CP primarily with respect to rare, threatened, and endangered species, wetlands and waterbodies, and the Project's stormwater management.

The Commission is advised that the Certificate Holders adequately addressed all NYSDEC Staff's comments in the revised Segment 3 EM&CP as filed on March 22, March 23, March 24, April 13, and May 10, 2023.

NYSAGM

NYSAGM Staff reviewed the Segment 3 EM&CP and provided informal comments and recommendations and took part in technical meetings with the Certificate Holder and its consultants. NYSAGM Staff suggested revisions to the EM&CP Plan and Profile

designs and other parts of the Segment 3 EM&CP. These suggestions included, but were not limited to, trenching of agricultural lands, clarification of agricultural land boundaries, access road type and location, topsoil stripping, depth of facility and agricultural restoration.

With the exception of trenching of agricultural lands (requirements regarding such exception is described below in Ordering Condition 3), the Commission is advised that the Certificate Holders adequately addressed all NYSAGM Staff's comments in the revised Segment 3 EM&CP as filed on March 22, March 23, March 24, April 13, and May 10, 2023.

Public Comments

On December 28, 2022, a public comment was received regarding the Segment 3 EM&CP from a property owner in Whitehall. The commenter requested that the Project route be removed from their property or otherwise be relocated to the edge of the property adjacent to the railroad. The commenter further indicated that if relocation of the transmission line is not possible, the property owner would require restitution prior to any construction commencement.

CHPE has reported that when the Segment 3 EM&CP was filed, the commenter was provided with a structural inspection letter because his boundary line was located within 100 feet of CHPE work areas.⁶ However, upon receipt of the inquiry from the commenter, CHPE stated that it investigated the location of structures on the property relative to the alignment and confirmed that there are no structures located close to the alignment. CHPE indicated the cable installation will occur on the opposite side of the railroad tracks from the commenter's

⁶ CHPE Segment 3 EM&CP supplement cover letter filed May 10, 2023, p. 2.

property and at a significant distance from any structures located thereon. CHPE reported it is engaging in ongoing conversations with the commenter regarding a proposed temporary easement for work areas needed for construction and indicates that it will engage in further discussions with the landowner regarding such use.

DISCUSSION AND CONCLUSION

As noted above, DPS Staff, NYSAGM Staff, NYSDEC Staff, and the public, raised various concerns and suggestions regarding the details of the proposed Segment 3 EM&CP. The Certificate Holders incorporated and resolved the agencies' feedback in their March 22, March 23, March 24, April 13, and May 10, 2023 revisions to the EM&CP filings.

Although the Certificate Holders provided a response to the comments from the landowner in Whitehall, the Certificate Holders should keep DPS Staff informed of any proposed additional workspace outside of the defined work limits resulting from negotiations with the property owner; ultimately, if such additional space is needed, then the Certificate Holders shall address and request approval for such changes in accordance with the Certificate and any applicable regulations.

Based upon its review, DPS Staff advises that the revised Segment 3 EM&CP complies with the applicable Certificate Conditions and adheres to the EM&CP Guidelines and BMPs included as Appendix E and Appendix F to the Certificate, respectively.

Upon review, the Commission finds that the Certificate Holders has adequately addressed the concerns raised by the public, DPS Staff and NYSDEC. Based on a review of all the documents submitted, responses received, and revised filings made by the Certificate Holders, the revised Segment 3 EM&CP for the Project, is approved.

The Commission orders:

1. The Environmental Management and Construction Plan for Whitehall to Fort Ann (Segment 3 EM&CP) submitted by Champlain Hudson Power Express, Inc. and CHPE Properties, Inc. (Certificate Holders) on December 23, 2022, and revised on March 22, March 23, March 24, April 13, and May 10, 2023, is approved subject to the following conditions.

2. Prior to construction activity affecting Co-located Infrastructure ("CI"), Certificate Holders shall file any final Agreement (including Road Use Agreements) required by CI owner and/or operator related to existing facilities located within the Construction Zone approved in the EM&CP for the Facility, or a proposed Construction Zone as provided for in Certificate Condition 28(d), and any CI that is either owned by a State agency or municipality, or a subdivision thereof, or owned or operated for public utility purposes by a regulated electric, gas, telecommunication, water, wastewater, sewer, or steam service provider. If a formal agreement is not required by such owner and/or operator of the CI being crossed (or encroached upon), Certificate Holders shall file a copy of an acknowledgement from the CI owner and/or operator indicating general agreement of crossing or encroachment designs affecting such existing CI ("acknowledgment"), provided that such acknowledgment was not filed with Segment 3 EM&CP. Along with final Agreements, or acknowledgments (not already included in the Segment 3 EM&CP), Certificate Holders shall provide final design plans including the location of the existing CI facilities in relation to the proposed Project facilities, means of crossing, descriptions of any safety procedures to be implemented during installation, and proposed mitigation measures for protection of existing facilities. For instances when Agreements or acknowledgments are not secured due to

unresponsive CI owners and or operators, the Certificate Holders shall file, prior to requesting a Notice to Proceed with construction related to the Segment 3 EM&CP, a narrative describing efforts made in attempting to contact such unresponsive CI owners and or operators. If any designs (finalized through Agreements, acknowledgments, or field verified locations of existing CI) affecting existing CI result in modification to the proposed location or design of the transmission route or related facilities contained in the Segment 3 EM&CP, then the Certificate Holders shall address and request approval for such changes in accordance with the Certificate and any applicable regulations.

3. The Certificate Holders shall not commence construction until they have received a "Notice to Proceed with Construction" letter sent by the Chief of Environmental Certification and Compliance of the Office of Energy System Planning and Performance, or by a designee. Prior to any construction activity on agricultural land, the Certificate Holders shall provide, via an EM&CP minor change, a final "Agricultural Trench Detail" for trenching of agricultural lands located along Segment 3 with proof of acceptance of the detail by NYSAGM.

4. The Certificate Holders shall attempt to schedule construction activities on the Project ROW to occur between the hours of 7:00 a.m. through 7:00 p.m. Monday through Saturday and attempt to avoid construction on Sundays or federal or state holidays. If construction activities are required to occur on a Sunday or holiday or after 7:00 p.m. any day (Extended Work), Certificate Holders shall implement the noise impact avoidance and minimization measures outlined in Section 10 of the EM&CP for such Extended Work. In pre-construction notices distributed to the community, Certificate Holders shall identify where and

when Extended Work is anticipated within these Segments, to the maximum extent practicable.

5. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary