

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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: 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. (the “Certificate Holders”) are the holders of a Certificate of Environmental Compatibility and Public Need (“Certificate”) issued on April 18, 2013 by the New York State Public Service Commission (the “Commission”) pursuant to Article VII of the Public Service Law (“PSL”), to construct and operate the Champlain Hudson Power Express Project (the “Facility”).¹

Since the Certificate was issued, the Certificate Holders have worked diligently to obtain the additional governmental permits and approvals necessary to fully and finally authorize construction and operation of the Project, with a view towards further minimization of Project impacts and in consideration of certain changed circumstances. To date, the Commission has approved three Environmental Management and Construction Plans (“EM&CP”) and Facility

¹ The Commission originally issued the Certificate to Champlain Hudson Power Express, Inc. (“CHPEI”) and CHPE Properties, Inc. In August 2020, CHPEI converted from a corporation 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, Order Approving Transfers* (July 17, 2020).

construction has commenced on Segments 1 and 2 in the Towns of Putnam, Dresden and Whitehall, as well as on a Temporary Laydown Yard in the Town of Fort Edward, Washington County, New York. As design continues on additional Facility segments, consultations with stakeholders including railroad and roadway owners and other changed circumstances have been identified necessitating additional amendments to the Certificate for (1) an approximately 0.8-mile segment of the Facility route approved in the Town and Village of Catskill (hereinafter the “Catskill Reroute”), and (2) revisions to certificate conditions related to notification to critical infrastructure (“CI”) owners in situations where such owners cannot be identified or located, or where disputes arise with CI owners which require further efforts to resolve.

By this Petition, and in conjunction with the filing of the Segment 11 EM&CP, Certificate Holders hereby seek an amendment to the Certificate related to the Facility route through Catskill, Greene County, New York, in the vicinity of the Catskill Creek. In addition to decreasing the Project’s overall impact to waterbodies and wetland resources, the proposed Catskill Reroute removes portions of the Facility from some local roadways, relocating away from residences and into NY State Department of Transportation lands along State Routes 23 and 9W, and provides a more technologically constructable installation of Facility components beneath major railroad and highway infrastructure, as well as under the Catskill Creek. As discussed further below, the Certificate Holders believe the Catskill Reroute is consistent with the overall character of the Facility, in that it retains the goal of siting primarily within existing and previously disturbed travel corridors, and provides a buildable Facility alignment with an overall reduction in impacts to environmental resources and the community.

In addition, Certificate Holders are requesting amendment of Certificate Condition 162 to add recent Certificate language which more practicably establishes procedural and timing

requirements for resolving potential disputes with stakeholders, particularly collocated infrastructure owners, in relation to the timing of EM&CP submittals and approvals.

Notice of this Petition 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

In support of the requested amendment, the Certificate Holders state as follows:

II. BACKGROUND

1. On December 6, 2019, the Applicants filed a petition for a second amendment to the Certificate (“Amendment 2”) seeking approval of certain preferred alternatives to the Certified Project layout, including relocating the Catskill Creek crossing in the Town and Village of Catskill (the “Catskill Alternative”), after Certificate Holders were notified that the originally Certified Route’s plan to attach cables to the CSX railroad bridge crossing Catskill Creek was no longer viable, given that the bridge would need to be replaced during the CHPE Facility’s lifetime.

2. The Amendment 2 Catskill Alternative had the cables depart from the Certified Route at MP 221 in Catskill and travel west for approximately 0.1 miles underneath undeveloped land to reach Allen Street. The route was then intended to follow Allen Street for 0.2 miles, at which point a Horizontal Directional Drilling (“HDD”) routed the cables under Catskill Creek from Allen Street (north side of Creek) to a private property (south side of Creek). From the private property, the cables would travel across Route 9W and proceed onto Willow Lane prior to accessing a private easement and rejoining the CSX ROW and the Certified Route at MP 221.7 (*see* Amendment 2 Petition, Appendices A-C, filed December 6, 2019; DMM Items 767-68 and Amendment 2 Petition Supplement, December 20, 2019; DMM Item 770).

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

3. The Commission issued an Order approving the route relocations in Amendment 2, including the Catskill Alternative, on August 13, 2020. Thereafter, the Amendment 2 Catskill Alternative became the new Allowed Deviation Zone (“ADZ”) for the Project.

4. As design progressed on the route through this area of Catskill, several technical issues during the design process required that the transmission line be shifted further west of the newly approved ADZ. At least four (4) issues along the ADZ were identified upon receipt of enough subsurface survey information to generate a complete route assessment (as discussed further in Segment 11 EM&CP at Appendix E, Excursion S11-2 , incorporated here by reference):

- Inability to construct the HDD from CSXT ROW (Certified Mile Point [MP] 220.9) to Allen St. (Alternate MP 0.15) due to insufficient HDD workspace and potential for substantial impact to utilities and local landowners along Allen Street. Additionally, the placement of a splice vault along Allen Street was not feasible without significant impacts to waterbodies, sanitary sewer and natural gas mains within the ADZ.
- Infeasible HDD across Catskill Creek from Allen Street (Alternate MP 0.21) to private property between the Route 9W ROW and the CSXT ROW (Alternate MP 0.45) due to insufficient space for HDD work areas, impractical and in-constructible complex HDD curvature, risk of impact to unknown abutments of CSXT rail bridge and potential impact to future development plans of a private landowner.
- Infeasible conduit “S-curve” alignment at the intersection of Route 9W and West Main Street (Alternate MP 0.5 to 0.55) due to significant roadway and utility impacts and impacts to travelling public. The “S-curve” alignment would have

required full closure of Route 9W through-lanes and the intersection of Route 9W and West Main Street due to the need for the alignment to cross the travel lanes twice and due to the required depth of installation (9-13’).

- Infeasible alignment at Intersection of Rte. 9W & Depot St. (East of Alt. MP 0.7) due to roadway, utility, traffic and/or structure impacts to existing house foundation. Required depth of conduit installation to avoid significant utility impacts and avoid impact to house foundation would have resulted in additional significant impacts to travelling public.

5. Based on the foregoing, the Certificate Holders compared various alternatives and identified an alternative route utilizing public ROWs which ultimately decreases Project impacts. For example, the Catskill Reroute option eliminates the need to cross the Hans Vozen Kill, a Class C stream, in two locations, while maintaining the Catskill Creek crossing as an HDD to avoid impacts to that waterbody.

6. Overall, stakeholder response to the Catskill Reroute proposal has been positive. Prior to filing this amendment and the Segment 11 EM&CP, Certificate Holders engaged with the Town and Village of Catskill regarding the proposed Catskill Reroute, which local officials have supported due to an overall decrease to the community and the travelling public along several local roadways. Both the Town and the Village have previously passed municipal consents and are expected to approve Road Use Agreements, which cover the Catskill Reroute.

7. The Catskill Reroute has been developed taking into consideration the historical concerns raised by CSXT about the location of the ADZ within the railroad right-of-way in this area of the alignment. Thus, CSXT is supportive of the current Catskill Reroute as proposed in this Amendment.

8. Further, Certificate Holders have engaged with NYS Department of Transportation (“NYSDOT”) for several years on impacts to State highway rights-of-way, and presented in detail the proposed Catskill Reroute starting in early March 2023 to solicit agency feedback prior to submission of the Segment 11 EM&CP (incorporated here by reference). Certificate Holders will continue to hold meetings and work with NYSDOT to address proposed alignment locations, work areas and work zone traffic controls necessary to ensure the safety of the traveling public during installation on the NYSDOT right-of-way.

9. The CHPE Team has also briefed the New York Office of General Services (“NYOGS”), which has issued a construction permit to CHPE to cross under the Catskill Creek. This briefing was necessitated because the location of the HDD under the Catskill Creek has shifted upstream by a minor amount. NYOGS expressed no concerns regarding this minor change in crossing location.

10. Moreover, the Catskill Reroute impacts significantly fewer private landowners as compared with the Amendment 2 Catskill Alternative, since the majority of the lands proposed for use in this alternative are publicly owned highway rights-of-way. CHPE’s private land negotiation team has contacted all landowners affected by the Catskill Reroute and is in the process of negotiating agreements for those properties.

III. DESCRIPTION OF PROPOSED ALTERNATIVE ROUTE

11. The proposed Catskill Reroute is approximately 0.8 mile in length and occurs approximately 860 linear feet west of the ADZ at the farthest point (*see* Segment 11 EM&CP Appendix C, Plan and Profile Drawings, at sheets C-105 to C-107.1, incorporated here by reference). Although this excursion is not immediately adjacent to the ADZ, it is sited within previously disturbed public road ROWs to minimize environmental and community impacts and

will also cross under Catskill Creek via HDD to avoid environmental impacts. The proposed excursion therefore still constitutes a minor change in design. Environmental impacts will be minimized, and the overall character of the Facility will not change. A detailed impact review and a summary of environmental considerations are provided below.

12. The Catskill Reroute begins at approximately MP 220.9 of the Certified Route, near the intersection of State Route 23 and the CSXT right-of-way in the Town of Catskill (as depicted in Segment 11 EM&CP Appendix E, Attachment 1, Sheet 2; *see also* Segment 11 EM&CP Appendix C, Plan and Profile Drawings, at sheets C-105 to C-107.1). The proposed alternative route leaves the ADZ at this location to safely cross these resources, and to redirect the line into the State-owned land used for highway department purposes, then along Allen Street to the State Route 9W right-of-way. The route then follows State Route 9W on NYSDOT land to a location north of the intersection of Main Street, Route 9W and Maple Avenue in the Village of Catskill, where an HDD will cross under Catskill Creek. That HDD passes beneath Old Main Street, Catskill Creek, Bushnell Ave and Main Street before emerging on private property near the intersection of Main Street and Maple Avenue, where it reenters the ADZ along the CSXT right-of-way.

13. Use of HDD installation methods for the Catskill Reroute allow this amended route to avoid all impacts to jurisdictional streams; overall impacts (temporary and permanent) to wetland resources would be the same or less than what would have occurred from the Certified Route. Wetland and waterbody resources were delineated in connection with the Segment 11 EM&CP and can be found in Appendix M thereto, and are discussed as specifically related to the Catskill Reroute in the Segment 11 EM&CP, Appendix E.

14. The Catskill Reroute does not impact any agricultural lands or recreational facilities (*see* Segment 11 EM&CP, Appendix E, incorporated here by reference).

15. One potential cultural resource was identified within the proposed Catskill Reroute, however use of HDD installation techniques will ensure avoidance of direct impacts to this resource (*see* Segment 11 EM&CP Table 11-1, Appendix E and O, incorporated here by reference).

16. The Catskill Reroute occurs along a vegetated edge of the CSXT railroad ROW and encroaches slightly into adjacent private properties. Minor tree and vegetation clearing would have been required within the ADZ at this location. Although this excursion is still sited within a previously disturbed highway corridor, it has been pushed into forested edges of public road ROWs and is therefore anticipated to require slightly more tree and vegetation clearing. Clearing will be selective and only remove what is required within the LOW for the construction of the Facility and will be conducted in a manner consistent with the existing Certificate and federal permits (*see* Segment 11 EM&CP, Appendix E).

17. Several alternative HDD routes (and non-HDD options) were considered for the crossing of Catskill Creek, of which at least partly occur outside of the ADZ and due to the constraints present within the ADZ (*see* Segment 11 EM&CP, Appendix E). After an exhaustive engineering analysis of potential alternative routes, the alignment crossing Catskill Creek was considered not feasible or constructible if it remained within the ADZ. Non-HDD alternatives, such as a building a new utility bridge for crossing Catskill Creek (mostly within the ADZ) were deemed to result in substantial environmental impacts including to stream and floodplain encroachments as well as the burden of high costs and schedule delays associated with construction and permitting risks. The Catskill Reroute was selected as the preferred alternative as it

successfully crosses under Catskill Creek is acceptable to the NYSDOT, Town and Village of Catskill and impacted landowners and does not result in any increased environmental impacts.

18. Certificate Holders reviewed local laws enacted in the Town and Village of Catskill since the Amendment 2 Catskill Alternative was approved by the Commission in August 2020; a brief summary of applicable substantive local requirements is included as Attachment 1 hereto. The Certificate Holders are not seeking any additional relief from the substantive requirements of these local laws.

19. Overall, Certificate Holders believe the Catskill Reroute is consistent with the overall character of the Facility, in that it retains the goal of siting primarily within existing and previously disturbed travel corridors and provides a buildable Facility alignment with an overall reduction in impacts to environmental resources and the community (*see* Segment 11 EM&CP, Appendix E).

IV. AMENDMENTS TO CONDITION 162 on COLLOCATED INFRASTRUCTURE

20. The Certificate currently contains numerous provisions governing Collocated Infrastructure (CI) and the Certificate Holders' required consultations with CI owners. In the years since issuance of the Certificate, Certificate Holders have undertaken a significant effort to locate and assess potential impacts to CI as required under the Certificate, as well as to consult and negotiate with CI owners, and has made significant progress on this effort. However, Certificate Holders have encountered some difficulty in identifying the owners of some identified CI, particularly submerged CI in Lake Champlain or the Hudson or Harlem Rivers, and/or in reaching agreement with CI owners on proposed crossings. While Certificate Condition 162(j) and (k) provide a mechanism for Certificate Holders to submit in an EM&CP either (1) documentation showing agreements with CI owners on crossings or (2) a description of potential disagreements

or issues requiring resolution with CI owners, allowing the EM&CP review and approval process to proceed while such issues are resolved, Certificate Holders suggest that the below language from recent Article 10 Certificates³ would provide further guidance and a clear process in the event an agreement on CI crossings has not been achieved as the Facility proceeds to construction. The addition of this language would establish a process by which Certificate Holders, should they determine necessary, could seek NYSDPS assistance in achieving resolution of issues with CI owners. Certificate Holders believe the addition of this language as Certificate Condition 162(l) would contribute to the fair and orderly conduct of this proceeding, and would help ensure that potential CI disputes can be resolved in a timely manner to ensure that construction and operation of this important Facility⁴ is not unreasonably delayed.

Proposed Condition 162(l):

If the Certificate Holders believe that any action taken, or determination made, by a State or local agency or their respective staffs, in furtherance of such agency's review of any applicable regulatory permits or approvals, or actions or the lack thereof by a utility subject to the Public Service Commission's jurisdiction, is unreasonable or unreasonably delayed, conditioned or withheld, or where the Certificate Holder has exercised reasonable due diligence to identify a CI Owner and one cannot be identified or is unresponsive, the Certificate Holder may petition

³ See, e.g., Order Granting Certificate of Environmental Compatibility and Public Need in Case 18-F-0262, High Bridge Wind (March 11, 2021) at Condition 4; Order Granting Certificate of Environmental Compatibility and Public Need in Case 18-F-0087 (August 4, 2021) at Condition 4.

⁴ The New York Independent Systems Operator (NYISO) released a Reliability Needs Assessment in November 2022 which found that New York City and other areas face a major reliability risk if the CHPE Project does not become operational on schedule in the spring of 2026 (see NYISO release issued January 9, 2023: <https://www.nyiso.com/-/timing-of-chpe-transmission-project-vital-to-future-grid-reliability>). Given that risk, it is imperative that progress on construction of the CHPE Facility is not hindered or delayed by unresponsive or uncooperative CI owners, and that progress on other portions of the CHPE Facility be permitted to continue while conflicts with CI owners are resolved.

the Commission, upon reasonable notice to that agency, to seek a determination of any such unreasonable or unreasonably delayed, conditioned or withheld, action or determination, or for other resolution with respect to unresponsive or unidentifiable CI Owners. The permitting agency, agency staff or utility, as the case may be, may respond to the petition, within ten days, to address the reasonableness of its action or determination.

V. CONCLUSION

For the reasons set forth herein, Certificate Holders respectfully request the Certificate be amended to approve the Catskill Reroute and to modify Certificate language as otherwise specified above.

Dated: March 30, 2023

Respectfully submitted,

/s/ Laura Bomyea Darling
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Attachment 1

Local Law Overview

Summary of Substantive Local Law Changes Potentially Affecting the Catskill Reroute Since Certificate Amendment 2 (August 13, 2020)

In connection with the Catskill Reroute, the Certificate Holders reviewed local laws in the Town and Village of Catskill to determine whether any new substantive provisions of local law had been adopted which might apply to the proposed Catskill Reroute. While these municipalities have adopted some new local laws, most are not directly applicable to the CHPE Facility (an underground public utility use) and thus no waivers of substantive provisions of local law are necessary in connection with the requested Catskill Reroute Amendment.

For clarity, below is a brief overview of the changes to local law since August 2020 and an explanation of the applicability of those changes to the Facility.

Town of Catskill

In the Town of Catskill, the Catskill Reroute would be located in the Town's Industrial and Highway Commercial zoning districts, predominantly buried under local roads and NYSDOT-owned highway department property. Public Utilities are permitted special uses in the Town's HC district and, under Local Law No. 3 of 2022 (which amended 1 of 2022 to add public utilities as a special permit use in I district), in the Town's I district.

Town of Catskill Local Law Number 3 of 2022 also added the following substantive provisions of local law, with which the CHPE Facility complies, given that this public utility use will not create the kinds of impacts or "dangerous or objectionable elements" covered by this law.

§ 160-18. Additional regulations for Industrial Districts.

Uses permitted in Industrial Districts are subject to the following additional regulations.

- A. Performance standards. No land or building in any Industrial District shall be used or occupied in such a manner as to create any dangerous, injurious, noxious or other hazard due to odor, fire, noise, explosion, vibration, smoke, dust or other form of air pollution, glare, electrical or other disturbance. The determination of potentially dangerous or objectionable elements shall be made at locations as follows:
- (1) At the point of origin for fire and explosion hazards, for radioactivity and electrical disturbances and for air pollution.
 - (2) At the property line for noise, vibration, glare, odors and other hazards or nuisances.

Village of Catskill

In the Village of Catskill, the Catskill Reroute would be located in the Village's R-2 and R-3 zoning districts, predominantly within an HDD crossing under roads and Catskill Creek, before

returning to the CSX Transportation right-of-way. Public utility uses such as the CHPE Facility are permitted special uses in the Village's R-2 and R-3 Zoning Districts.

The Village amended its local laws governing certain zoning items, including signage, in Local Law 1 of 2022 amending the Catskill Village Zoning Law. Signage proposed for the CHPE Facility is limited to safety and directional signs necessary for the protection of traffic, as dictated by NYSDOT in CHPE's Highway Work Permit, or potentially temporary construction signs which would comply with the below substantive requirements.

In 2019, the Village also adopted Local Law No. 3 of 2019, Public Tree Protection Program, which imposes local permitting requirements for removal of trees along public highways or on public lands (requirements which are preempted by New York Public Service Law § 130). There are no substantive requirements applicable to the Facility in this provision, though CHPE notes that it will make efforts to minimize and avoid removal of trees along road edges, unless such removal is necessary for the construction or safe installation/operation of the Facility or as otherwise authorized by NYSDOT or the owners of local roadways.

Section 4.9 – Signage.

4.9.2 – General Compatibility.

Each sign shall be compatible within the context of its visual and physical environment. Consideration shall be given, but need not be limited, to the following elements:

- a. Size, bulk, and mass
- b. Texture, material, and colors
- c. Lighting and illumination
- d. Orientation and elevation
- e. General and specific location
- f. Proximity to streets, highways, and mass transit routes
- g. Design including size and character of lettering, logos, and related contents
- h. Background or field including the skyline
- i. Character and design of sign structure

4.9.3 – General Regulations.

The following regulations shall apply to all signs:

- a. Placement

- i. Off-premise signs or billboards shall not be permitted in any District except as allowed in Section 4.9.4.
- ii. Portable signs shall not be permitted in any District.
- iii. No sign shall be placed within 150 feet of a signalized, or within 50 feet of an un-signalized, street intersection so as to cause a traffic hazard at the intersection.
- iv. No sign shall be located where its position, shape, or color may interfere or be confused with any authorized traffic sign or device.
- v. No signs shall be placed upon trees, manmade or natural features (excluding buildings) or on utility poles, bridges, culverts, towers, or similar structures.
- vi. No sign shall project into the public right-of-way except as approved by the Superintendent of Public Works after consultation with the Chief of Police.
- vii. No lighting device or illuminated sign shall be placed so as to cause glare or reflection that may constitute a traffic hazard or public nuisance.

b. Design

- i. No sign shall use any words or symbols so as to interfere with, mislead or confuse traffic.
- ii. No sign shall employ any mirror or mirror-like surface nor any day-glowing or other fluorescent paint or pigment.
- iii. No sign shall be illuminated by, or contain, flashing, intermittent, rotating, or moving lights. All bare light sources and immediately adjacent reflecting surfaces shall be shielded from view. Neon tube is permitted only in the C-1 or C-2 district.
- iv. No sign shall consist of any banner, pennant, ribbon, streamer, balloons, spinner, or other similar moving, fluttering, or revolving device. Such devices shall be prohibited even if they have no message or logo on them. Such devices, as well as strings of lights, shall not be used for advertising or attracting attention whether or not they are part of the sign.

4.9.4 - Signs Exempt from a Permit.

The following signs are allowed without a permit provided they comply with the general regulations of this Article:

a. Exempt Temporary Signs

- i. One on-premise, non-illuminated sign listing the owner, designer and/or contractor where construction or renovation is in progress: maximum 10 sq. ft.

Local Law No. 3 of 2019 Public Tree Protection Program

II. Definitions

Roadside Tree: Any tree within five foot of the edge of the pavement of a road, street or highway.

IV. Permits required for planting, tree removal, alteration or pruning

A. No person shall, without first obtaining approval from the Village Board plant, remove, cut, top, prune, destroy or injure any park tree, public tree, roadside tree, street tree or any tree growing in or on a street easement or other public place. Approval for planting a tree on or bordering a public street or for removing, cutting, topping or pruning of a public tree is obtained through written request to the Village Board. . .

D. The Village Board shall give due consideration to the recommendations made by the Tree Council in acting on applications for alterations, including removal, to trees and shall issue approval when the Board establishes to its satisfaction that there is a need for the proposed action based on the following:

- o The presence of the tree would endanger the health safety or welfare of the general public, the applicant or the adjacent property owner;
- o The tree is diseased or threatens the health of other trees;
- o The tree(s) substantially interfere(s) with a permitted use of the property; and
- o The location of the tree(s) prevents compliance with state, county, or local standards for site lines, driveways and/or intersections.

V. Protection of Trees in Development Projects

E. The Planning Board shall consider, and incorporate where appropriate, the recommendations of the Tree Council in a tree preservation plan for a project or in conditions of approval to be adhered to by the developer in the development of the property. The plan shall, in the discretion of the Planning Board:

- a. Identify and show the location, type, size and health of trees within the development site;
- b. State the ultimate disposition and type, size and location of any trees to be planted;
- c. Set forth measures for protection of trees to be saved before, during and after construction