

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on August 17, 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 11
SUBJECT TO CONDITIONS

(Issued and Effective August 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).

Holder).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 the HVDC-Terrestrial Catskill (Segment 11) EM&CP on March 27, 2023, and filed revisions to the Segment 11 EM&CP on March 31 and June 21, 2023. This Order only pertains to the Segment 11 EM&CP, as revised, and covers construction and installation of the overland transmission cable in the Town and Village of Catskill (Greene County). The cable route for Segment 11 occurs mostly within the CSX railroad right-of-way (ROW) and totals approximately 8.6 miles. The Segment begins at the terminus of Segment 10, near the Athens/Catskill Town boundary and proceeds south to the Cementon Transitional HDD location, where the CHPE line enters the Hudson River (see Segment 17).

It should be noted that, as a result of consultations with stakeholders including railroad and roadway owners, the Certificate Holders have proposed an amendment to shift a portion of the Segment 11 route along an approximately 0.8-mile section of the Facility route in the Town and Village of Catskill. Details of this re-route are included in the Certificate Holders' pending Petition for an Amendment to the Certificate of Environmental Compatibility and Public Need ("Catskill Reroute Amendment Petition" filed on March 31, 2023, and revised on May 26, 2023). A portion of the 0.8-mile section (from Station 70058 + 50 to Station 70101 + 50), which is shown on Sheets C105 through C107 of Appendix C of the Segment 11 EM&CP filing) is within the New York State Department of Transportation (DOT) right-of-way. DOT is currently considering installation methods proposed by the Certificate Holders along that portion of the Segment 11 route. On August 1, 2023, DOT

⁵ See Segment 11 EM&CP Narrative (filed March 27, 2023), Table 1.1 for a schedule of anticipated EM&CP filings.

filed a letter with the Secretary describing its evaluation of the proposed cable installation within DOT ROW and indicated that it does not object to the Commission's overall approval of the Segment 11 EM&CP. However, DOT requested that the Certificate Holders further coordinate with DOT technical staff regarding the section included in the Catskill Reroute Amendment Petition and noted that several installation methods for that section are under consideration and being discussed between DOT and the Certificate Holders. Therefore, the approval of the 0.8-mile section discussed above is conditional upon the approval of the Catskill Reroute Amendment Petition and agreement on the appropriate installation methods between the Certificate Holders and DOT.

PUBLIC NOTICE

The Certificate Holders filed their proposed Segment 11 EM&CP on March 27, 2023. On March 31 and June 21, 2023, the Certificate Holders filed revisions to the Segment 11 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 published notice in two local newspapers of general circulation

in the Towns where the proposed Segment 11 are located. In accordance with Certificate Conditions 153 and 155, on June 28, 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 April 26, 2023, for the Segment 11 EM&CP. One public comment pertinent to the Segment 11 EM&CP was received on April 3, 2023. The commenter, who resides and owns a business along the planned Segment 11 route, described safety concerns related to the installation of CHPE facilities nearby an existing gas pipeline, potential interference with emergency vehicles' access to the owners' nearby business and residence as a result of CHPE construction activities, and reported an in-person (near the site of Segment 11 routing) confrontation involving CHPE representatives.

Any comments previously submitted (not related to activities included in this EM&CP), 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.

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

This Order approves the Segment 11 EM&CP, as revised, so that the Certificate Holders may begin the installation of the overland transmission cable in the Town and Village of Catskill (Greene County); however, no installation or construction activities shall occur along the 0.8-mile route from Station 70058 + 50 to Station 70101 + 50 (as shown in Sheets C105 through C107 of Appendix C of the Segment 11 EM&CP filing) until the Certificate Holders submit DOT-approved

installation method plans and the Catskill Reroute Amendment Petition has been approved and following the issuance of a separate Notice to Proceed with construction of that section by the Chief of Environmental Certification and Compliance of the Office of Energy System Planning and Performance, or by a designee.

THE EM&CP, COMMENTS AND RESPONSES

The Certificate Holders' Segment 11 EM&CP, as filed on March 27, 2023, and revised on March 31 and June 21, 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 11 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, with supporting documentation, 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." Additionally, Certificate Condition 157 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 11 EM&CP on March 31, 2023.

According to the Certificate Holders, all work will be located within the ADZ for Segment 11, except for eight locations. One additional ADZ excursion within the Segment 11 EM&CP will be separately addressed within the Segment 11 Amendment (Catskill Reroute). The eight permanent deviations from the ADZ are separated into two horizontal directional drilling (HDD) locations, five for additional space for splice vaults, and one for an open trench location. The plan sheets with deviations from the ADZ are shown in Table 1.3 of the Segment 11 Narrative and Table 1 of Appendix E.

According to Appendix E of the Segment 11 EM&CP, the justifications for the deviations from the ADZ regarding HDD locations are: limited space between the railroad (CSXT) and the road; to comply with railroad (CSXT) setback requirements; insufficient workspace between right-of-way and private properties; curvature; and to avoid conflicts with existing utilities and railroad operations. Justifications provided in Appendix E of the Segment 11 EM&CP for the deviations from the

ADZ regarding splice vault locations are: limited space between the railroad (CSXT) and the road; compliance with railroad (CSXT) setback requirements; additional space requirements for splice vault installation; steep slopes; stream locations adjacent to and within the vicinity of the alignment; and to avoid conflicts with existing utilities and railroad operations. Justifications provided in Appendix E of the Segment 11 EM&CP for the deviations from the ADZ regarding trench locations are: alignment shifting to obtain a better angle leading up to the transition vault and avoidance of road disturbance.

No significant increase in permanent environmental, agricultural, or cultural impacts are expected from the construction and operation of the eight relevant deviations presented in the Segment 11 EM&CP.

DPS

DPS Staff reviewed the Segment 11 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 design plans and other parts of the EM&CP. In addition, DPS Staff requested revisions or clarification on subject areas including critical infrastructure, Deviation Zone Excursions, Soil and Materials Management Plan, restoration, traffic controls, and cultural resources.

The Commission is advised that DPS Staff's recommendations were adequately addressed and resolved in the revised Segment 11 EM&CP filed on March 31 and June 21, 2023.

NYSDEC

NYSDEC Staff reviewed the Segment 11 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 design plans and other parts of the EM&CP primarily with respect to rare, threatened, and endangered species, wetlands and waterbodies, Soil and Materials Management Plan and the Project's spill prevention plan.

The Commission is advised that the Certificate Holders adequately addressed all NYSDEC Staff's comments in the revised Segment 11 EM&CP filed on March 31 and June 21, 2023.

NYSAGM

NYSAGM Staff reviewed the Segment 11 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 11 EM&CP. These suggestions included, but were not limited to, trenching of agricultural lands, clarification of agricultural land boundaries, and clarification on potential grading.

With the exception of trenching of agricultural lands (requirements regarding such exception is described below in Commission Order #3), the Commission is advised that the Certificate Holders adequately addressed all NYSAGM Staff's comments in the revised Segment 11 EM&CP filed on March 31 and June 21, 2023.

Public Comment

On April 3, 2023, a public comment was received regarding Segment 11 of the EM&CP from a property and business owner in the Town of Catskill. The commenter expressed safety concerns regarding the gas main running underground along Browns Crossing Road. Additional safety concerns were expressed

regarding the construction along part of the driveway that may present a hazard to their business patrons and interfere with emergency vehicles' access to the property in the event of an emergency.

The Certificate Holders have indicated that they have since worked with this landowner to address his concerns, and he signed an easement with the Project effective April 21, 2023. Nearby gas infrastructure has been identified and located in cooperation with local Co-located Infrastructure ("CI") owners, as discussed more fully in the EM&CP Narrative and Appendix R and will be protected in accordance with the Certificate and relevant CI agreements. Impacts to local businesses and residences during construction, including this commenter's, will be addressed in cooperation with landowners and other stakeholders to preserve property access and minimize temporary, construction-related disruptions to the maximum extent practicable.

DPS Staff indicated that it is satisfied that the concern has been rectified through the execution of an easement with the landowner; additionally, it should be noted that Condition 3 of this Order requires the Certificate Holders to submit any necessary crossing agreements (or acknowledgements of encroachments) executed between CHPE and CI owners, prior to initiating any work nearby existing utilities.

DISCUSSION AND CONCLUSION

As noted above, DPS Staff, NYSDEC Staff, NYSAGM Staff, and the public, raised various concerns and suggestions regarding the details of the proposed Segment 11 EM&CP. The Certificate Holders incorporated and resolved the agencies' feedback in their March 31 and June 21, 2023 revisions to the EM&CP filings.

Based upon its review, DPS Staff advise that the revised Segment 11 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 have adequately addressed the concerns raised by the public commenter, and DPS, NYSDEC, and NYSAGM Staff. Based on a review of all the documents submitted, responses received, and revised filings made by the Certificate Holders, the Segment 11 EM&CP for the Project, as revised, is approved subject to the conditions below.

The Commission orders:

1. The Environmental Management and Construction Plan for the HVDC-Terrestrial Catskill (Segment 11), submitted by Champlain Hudson Power Express, Inc. and CHPE Properties, Inc. (Certificate Holders) on March 27, 2023, and supplemented on March 31 and June 21, 2023, is approved subject to the following conditions.

2. The approval of the 0.8-mile portion of the excluded area discussed in the Order above, from Station 70058 + 50 to Station 70101 + 50, is conditional upon the approval of the Catskill Reroute Amendment Petition (filed on March 31, 2023, and revised on May 26, 2023); therefore, no work may be conducted within the excluded area until the Catskill Reroute Amendment Petition is approved and a Notice to Proceed with construction of that 0.8-mile portion has been issued by the Chief of Environmental Certification and Compliance of the Office of Energy System Planning and Performance, or by a designee.

3. Prior to construction activity affecting 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 11 EM&CP. Along with final Agreements, or acknowledgments (not already included in the Segment 11 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, at least ten days prior to requesting a Notice to Proceed with construction related to the Segment 11 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 11 EM&CP, then the Certificate Holders shall address and request approval for such changes in accordance with the Certificate and any applicable regulations.

4. The Certificate Holder shall not commence construction until it has 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 trenching activities within agricultural land, the Certificate Holders shall obtain approval of a final "Agricultural Trench Detail" through an EM&CP minor change request.

5. The Certificate Holder shall schedule construction activities on the Project right-of-way to occur between the hours of 7:00 a.m. through 7:00 p.m. Monday through Saturday, except no work is allowed on federal or State holidays. If, due to safety, planned outage restrictions, or continuous operation requirements, such construction activities are required to occur on a Sunday or holiday or after 7:00 p.m. (Extended Work), the Certificate Holder, after consultation with the affected municipality, shall seek approval from Department of Public Service staff for Extended Work. To the maximum extent practicable, such approval shall be requested at least 24 hours in advance.

6. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary