

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 12
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 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 Stony Point to Clarkstown (Segment 12) EM&CP on April 28, 2023, and filed revisions to the Segment 12 EM&CP on June 28 and July 26, 2023. This Order only pertains to the Segment 12 EM&CP, as revised, which covers the overland construction including installation of transmission facilities entirely within public road right-of-way (ROW) in the Towns of Stony Point, Haverstraw, and Clarkstown and the Villages of Haverstraw and West Haverstraw, Rockland County. No section of the alignment is proposed within or directly crossing a railroad ROW. However, a proposed section of the facilities included in Segment 12 is along Route 9W, which passes over a tunnel crossing of a railroad owned and operated by CSX Transportation (CSXT). This tunnel is approximately 80 feet below the Segment 12 alignment which will be located entirely within NYSDOT ROW; and avoids interference with, interruption, or endangerment of CSXT operations and facilities. Therefore, railroad crossing procedures are not applicable for Segment 12 construction. It should also be noted that no agricultural land is affected by construction activities of Segment 12; therefore, impacts to agricultural land are not discussed in this Order.

PUBLIC NOTICE

The Certificate Holders filed their proposed Segment 12 EM&CP on April 28, 2023. On June 28 and July 26, 2023, the Certificate Holders filed revisions to the Segment 12 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,

⁵ See Segment 12 EM&CP Narrative (filed April 28, 2023), Table 1.1 for a schedule of anticipated EM&CP filings.

businesses, and building, structure, and facility owners, owners of 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 12 are located. In accordance with Certificate Conditions 153 and 155, on August 1, 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 May 26, 2023, for the Segment 12 EM&CP. Numerous comments pertaining to in-water work were submitted by the public. However, no public comments pertinent to the Segment 12 EM&CP were received. Any comments previously submitted related to in-water work, 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) and the Department of Environmental Conservation staff (NYSDEC Staff) provided informal comments and recommendations and took part in technical meetings with the Certificate Holders.

This Order approves the Segment 12 EM&CP, as revised, so that the Certificate Holders may begin the overland construction including installation of transmission facilities within public road ROW in the Towns of Stony Point, Haverstraw, and Clarkstown and the Villages of Haverstraw and West Haverstraw, Rockland County, pursuant to the Certificate.

THE EM&CP, COMMENTS AND RESPONSES

The Certificate Holders' Segment 12 EM&CP, as filed on April 28, 2023, and revised on June 28 and July 26, 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 12 EM&CP identifies and defines the scope of work relevant to this construction phase for the installation of electric transmission facilities within public road ROW in the Towns of Stony Point, Haverstraw, and Clarkstown and the Villages of Haverstraw and West Haverstraw, including: construction access, trenching and installation of cables, traffic control, threatened and endangered species, co-located infrastructure mitigation, 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 12 EM&CP on April 28, 2023.

According to the Certificate Holders, all work will be located within the ADZ for Segment 12, except for seventeen locations within Segment 12. The seventeen permanent deviations from the ADZ for Segment 12 are separated into seven for horizontal directional drilling (HDD) workspace and ten for splice vault workspace. The plan sheets with deviations from the ADZ are shown in Table 1.3 of the Segment 12 Narrative and Table 1 of Appendix E.

According to Appendix E of the Segment 12 EM&CP, the justifications for the deviations from the ADZ related to HDD locations and splice vault locations include engineering constraints, avoidance of impacts to pre-existing utilities and cultural resources, and minimization of traffic impacts.

No significant increase in permanent environmental, agricultural, or cultural impacts are expected from the construction and operation of the seventeen relevant deviations presented in the Segment 12 EM&CP.

DPS Staff

DPS Staff reviewed the Segment 12 EM&CP and provided informal comments, participated in technical meetings, and provided recommendations to the Certificate Holders and their

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 co-located infrastructure, the Public Involvement Plan, and general site-specific information.

The Commission is advised that DPS Staff's recommendations were adequately addressed and resolved in the revised Segment 12 EM&CP filed on June 28 and July 26, 2023.

NYSDEC Staff

NYSDEC Staff reviewed the Segment 12 EM&CP and provided informal comments and recommendations and took part in technical meetings with the Certificate Holders and their 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, waterbodies, geotechnical analysis, and the Project's Soil and Material Management Plan.

The Commission is advised that the Certificate Holders adequately addressed all NYSDEC Staff's comments in the revised Segment 12 EM&CP as filed on June 28 and July 26, 2023.

DISCUSSION AND CONCLUSION

As noted above, DPS Staff and NYSDEC Staff, raised various concerns and suggestions regarding the details of the proposed Segment 12 EM&CP. The Certificate Holders incorporated and resolved the agencies' feedback in their June 28 and July 26, 2023 revisions to the EM&CP filings.

Based upon its review, DPS Staff advises that the revised Segment 12 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 DPS and NYSDEC Staff. Based on a review of all the documents submitted, responses received, and revised filings made by the Certificate Holders, the Segment 12 EM&CP for the Project, as revised, is approved.

The Commission orders:

1. The Environmental Management and Construction Plan for the installation of electric transmission facilities and related construction within public road ROW in the Towns of Stony Point, Haverstraw, and Clarkstown and the Villages of Haverstraw and West Haverstraw, Rockland County (Segment 12), submitted by Champlain Hudson Power Express, Inc. and CHPE Properties, Inc. (Certificate Holders) on April 28, 2023, and revised on June 28 and July 26, 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 12 EM&CP. Along with final Agreements, or acknowledgments (not already included in Segment 12 EM&CP), Certificate Holders shall provide final design plans including the location of the existing 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 Segment 12 EM&CP, a narrative describing efforts made in attempting to get such Agreements or acknowledgments. 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 12 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.

4. 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.

5. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary