

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 SEGMENTS 4 and 5  
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)<sup>1</sup> to Champlain Hudson Power  
Express, Inc. and CHPE Properties, Inc. (CHPE or Certificate

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

Holder).<sup>2</sup> 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.<sup>3</sup> The Certificate provides flexibility for the Certificate Holders to develop the Facility in segments in order to facilitate construction sequencing and scheduling.<sup>4</sup> As such, as proposed and subsequently authorized by the Commission, the Project is being divided into several overland and marine segments which

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<sup>2</sup> 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).

<sup>3</sup> CECPN Order, Certificate Conditions 6, 7, and 145 through 164.

<sup>4</sup> Id., Certificate Condition 6.

will be contained in separate design packages in the EM&CP filings.<sup>5</sup>

The Certificate Holders filed the Kingsbury to Milton (Segments 4 and 5) EM&CP on April 23 and 24, 2023, and filed revisions to the Segments 4 and 5 EM&CP on July 26, 2023. This Order pertains to the Segments 4 and 5 EM&CP, as revised, which covers the overland construction including the installation of transmission facilities along Canadian Pacific (CP) railroad and state, county, and town road rights-of-way (ROWS) in the Towns of Kingsbury, Milton, and Village of Fort Edward, Washington County, and the Towns of Moreau, Northumberland, Wilton, Greenfield, Ballston, and City of Saratoga Springs, Saratoga County.

PUBLIC NOTICE

The Certificate Holders filed their proposed Segments 4 and 5 EM&CP on April 23 and 24, 2023. On July 26, 2023, the Certificate Holders filed revisions to the Segments 4 and 5 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, 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

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<sup>5</sup> See the Segments 4 and 5 EM&CP Narratives (filed April 23 and 24, 2023), Table 1.1 for a schedule of anticipated EM&CP filings.

Certificate Holders published notice in two local newspapers of general circulation in the Towns where the proposed Segments 4 and 5 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 15, 2023, for the Segments 4 and 5 EM&CP. One public comment pertinent to the Segments 4 and 5 EM&CP was received, which is addressed below. 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.

Department of Public Service staff (DPS Staff) and 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 Segments 4 and 5 EM&CP, as revised, so that the Certificate Holders may begin overland construction including the installation of transmission facilities along CP railroad and state, county, and town ROWs in the Towns of Kingsbury, Milton, and Village of Fort Edward, Washington County, and the Towns of Moreau, Northumberland, Wilton, Greenfield, Ballston, and City of Saratoga Springs, Saratoga County.

#### THE EM&CP, COMMENTS AND RESPONSES

The Certificate Holders' Segments 4 and 5 EM&CP, as filed on April 23 and 24, 2023, and revised on July 26, 2023, provide 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 Segments 4 and 5

EM&CP identify and define the scope of work relevant to this construction phase for the installation of electric transmission facilities along CP railroad and state, county, and town ROWs in the Towns of Kingsbury, Milton, and Village of Fort Edward, Washington County, and the Towns of Moreau, Northumberland, Wilton, Greenfield, Ballston, and City of Saratoga Springs, Saratoga County, 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&CPs 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 Segments 4 and 5 EM&CP on April 24, 2023.

According to the Certificate Holders, all work will be located within the ADZ for Segments 4 and 5, except for seventeen locations within Segment 4 and twelve locations within Segment 5. The twenty-nine permanent deviations from the ADZ for Segments 4 and 5 are separated into twenty-two horizontal directional drilling (HDD) locations and seven for general open trench locations. The plan sheets with deviations from the ADZ are shown in Table 1.3 of the Segment 4 and 5 Narrative and Table 1 of Appendix E.

According to Appendix E of the Segments 4 and 5 EM&CP, the justifications for the deviations from the ADZ related to HDD locations are: engineering constraints due to limited space between the CP railroad and the road; weak soils (determined via geotechnical analysis), route curvature, and avoidance of contaminated sites (hazardous waste, superfund, or otherwise environmentally impaired land uses). Justifications provided in Appendix E of the Segments 4 and 5 EM&CP for the deviations from the ADZ related to general open trench locations are: engineering constraints due to steep slopes; avoidance of impacts to streams adjacent to and within the vicinity of the alignment; avoidance of potential adverse impacts to utilities located at close proximity to the CP railroad, and the need for larger areas of temporary construction in some locations.

No significant increase in permanent environmental, agricultural, or cultural impacts are expected from the construction and operation of the Facility within the twenty-nine deviations presented in the Segments 4 and 5 EM&CP.

DPS Staff

DPS Staff reviewed the Segments 4 and 5 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, including the following topics: stream crossings, co-located infrastructure, Project parking, and general site-specific information.

The Commission is advised that DPS Staff's recommendations were adequately addressed and resolved in the revised Segments 4 and 5 EM&CP filed on July 26, 2023.

NYSDEC Staff

NYSDEC Staff reviewed the Segments 4 and 5 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 (RTE) species, waterbodies, and the Project's Stormwater Pollution Prevention Plan.

The Commission is advised that the Certificate Holders adequately addressed all NYSDEC Staff's comments, except for the comments pertaining to the RTE Karner Blue Butterfly, in the revised Segments 4 and 5 EM&CP, as filed on July 26, 2023. Therefore, Certificate Holders shall be required to comply with the condition relating to the mitigation of impacts to the Karner Blue Butterfly set forth below.

Public Comments

On May 19, 2023, a public comment was received from the City of Saratoga Springs. The City requested the public

comment period be extended to June 20, 2023, to review the documentation adequately and facilitate a full opportunity to engage the public.

In response to the requested extension of the comment period, the Certificate Holders noted that the EM&CP was submitted on April 23 and 24, 2023, which has allowed for a public comment period beyond the requested deadline of June 20, 2023. In addition, the Certificate Holders have indicated that they have met with and continue to consult with the City to answer the City's questions and solicit feedback as appropriate, to ensure local officials understand the location of the alignment and the proposed work within or near the City, and to negotiate a Road Use and Crossing Agreement. The Certificate Holders agree to continue these discussions throughout the construction of the Facility and appreciate the City's time and cooperation. DPS Staff notes that although the CECPN Order established the 30-day EM&CP comment period, the public may file comments any time during the construction or operation phase of the Project, regardless of whether it is outside of the 30-day EM&CP comment period, and it will appropriately consider concerns related to the EM&CP, construction, and operation of the Project.

#### DISCUSSION AND CONCLUSION

As noted above, DPS Staff and NYSDEC Staff, raised various concerns and suggestions regarding the details of the proposed Segments 4 and 5 EM&CP. The Certificate Holders incorporated and resolved the agencies' feedback in their July 26, 2023 revisions to the EM&CP filings.

Based upon its review, DPS Staff advises that the revised Segments 4 and 5 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, other than those regarding the Karner Blue Butterfly discussed above, raised by DPS and NYSDEC Staff. Based upon a review of all the documents submitted, responses received, and revised filings made by the Certificate Holders, the Segments 4 and 5 EM&CP for the Project, as revised, is approved subject to the conditions below.

The Commission orders:

1. The Environmental Management and Construction Plan regarding the installation of electric transmission facilities and related construction along Canadian Pacific railroad and state, county, and town rights-of-way in the Towns of Kingsbury, Milton, and Village of Fort Edward, Washington County, and the Towns of Moreau, Northumberland, Wilton, Greenfield, Ballston, and City of Saratoga Springs, Saratoga County (Segments 4 and 5 EM&CP) submitted by Champlain Hudson Power Express, Inc. and CHPE Properties, Inc. (Certificate Holders) on April 23 and 24, 2023, and revised on July 26, 2023, is approved subject to the following conditions.

2. No work shall occur at or between the entrance and exit bore pits for the horizontal directional drilling (HDD) area at HDD #32A, as shown in Appendix C (Plan and Profile Drawings) sheets C313 and C313A, until the Certificate Holders file a minimization plan approved by Department of Public Service staff and Department of Environmental Conservation staff.

3. 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 Segments 4 and 5 EM&CP. Along with final Agreements, or acknowledgments (not already included in Segments 4 and 5 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 Segments 4 and 5 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 Segments 4 and 5 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 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 trenching activities within 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 Segments 4 and 5.

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