

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on March 16, 2023

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
Diane X. Burman
James S. Alesi
Tracey A. Edwards
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 THE STONY POINT TRANSITIONAL HORIZONTAL DIRECTIONAL DRILL
SUBJECT TO CONDITIONS

(Issued and Effective March 20, 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

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

Express, Inc. and CHPE Properties, Inc. (Certificate 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 Holder 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 Holder 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 Holder" 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 Holder filed its proposed Stony Point Transitional Horizontal Directional Drill (HDD) EM&CP (Segment 16 HDD EM&CP) on September 29, 2022. On January 25 and February 23, 2023, the Certificate Holder filed supplements to the Segment 16 HDD EM&CP. This Order only pertains to the Segment 16 HDD EM&CP, as revised, which covers the transitional HDD proposed in the Town of Stony Point (Rockland County), that will connect the Stony Point to Haverstraw Overland Segment (Segment 12) and the Lower Hudson River Marine Segment (Segment 20), as well as utilization of a temporary laydown yard at Tomkins Cove (Town of Stony Point).

PUBLIC NOTICE

The Certificate Holder filed its proposed Segment 16 HDD EM&CP on September 29, 2022. On January 25 and February 23, 2023, the Certificate Holder filed supplements to the Segment 16 HDD EM&CP. Public notice of the EM&CP filing 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 (100) 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

⁵ See Segment 16 HDD EM&CP Narrative (filed February 23, 2023), Table 1-1 for a schedule of anticipated EM&CP filings.

further required by Certificate Conditions 153 and 155, the Certificate Holder published notice in three local newspapers of general circulation in the Towns where the proposed HDD is located. In accordance with Certificate Conditions 153 and 155, on February 16, 2023, the Certificate Holder filed the affidavit of service and proofs of publication.

The 30-day comment period, required by Certificate Condition 155(a)(8), ended on October 29, 2022, for the Segment 16 HDD EM&CP. One public comment pertaining to the Segment 16 HDD EM&CP was received prior to its filing and will be discussed in the Order below. Any pertinent comments previously submitted, and any additional comments received, will be addressed during the review of the relevant future EM&CP segments.

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

This Order approves the EM&CP for the Segment 16 HDD, as revised, so that the Certificate Holder may begin construction of the associated HDD in support of the Facility, pursuant to the Certificate.

THE EM&CP, COMMENTS AND RESPONSES

The Certificate Holder's revised Segment 16 HDD EM&CP, as filed on September 29, 2022, and supplemented on January 25 and February 23, 2023, provides both typical and site-specific techniques, procedures, and requirements to be followed in development of the Project by the Certificate Holder to ensure environmental protection. The Segment 16 HDD EM&CP identifies and defines the scope of work relevant to this phase, including: construction access; protective measures for streams/rivers and

wetlands; rare, threatened and endangered species; resource protection and the Certificate Holder's 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 CECPN 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 Holder is 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 Holder submitted a "Justification for Excursions Outside the Deviation Zone" as Appendix C to the Segment 16 HDD EM&CP on September 29, 2022.

According to the Certificate Holders, all trenching activities and HDD work will be located within the ADZ for the Segment 16 HDD, with the exception of the first overland segment. The Certificate Holders are proposing minor work which will be outside of the ADZ associated with the Stony Point Transitional HDD beginning approximately 700 feet northeast of the intersection of Battlefield Road and Park Road, extending approximately 2,400 feet. As explained by the Certificate Holders, the physical limitations and obstacles have resulted in necessary shifts in the Facility location at this site as described herein and within the Segment 16 HDD EM&CP. According to the Certificate Holder this change is necessary to avoid impacts to a steep slope within the 100-foot adjacent area of a State-mapped wetland.

No additional permanent environmental, agricultural, or cultural impacts are expected from construction of the Stony Point Transitional HDD. The proposed deviation will avoid impacts to wetlands, terrestrial ecology, and steep slopes, ultimately resulting in a net reduction in potential environmental impacts. Therefore, the ADZ exceedance on the Stony Point Transitional HDD will not result in additional impacts to wetlands, terrestrial ecology, rare, threatened and endangered species, or habitat.

DPS Staff

DPS Staff reviewed the Segment 16 HDD EM&CP and provided informal comments, took part in technical meetings, and provided recommendations to the Certificate Holder and its consultants. DPS Staff suggested revisions to the EM&CP plans, designs, and other parts of the EM&CP. In addition, Staff requested revisions or clarification on subject areas including restoration, sound, public involvement, complaint resolution,

traffic control, and parking. DPS Staff's recommendations were adequately addressed and resolved in the revised Segment 16 HDD EM&CP's January 25 and February 23, 2023 supplements.

NYSDEC

NYSDEC Staff reviewed the Segment 16 HDD EM&CP and provided informal comments and recommendations and took part in technical meetings with the Certificate Holder and its consultants. NYSDEC Staff suggested revisions to the EM&CP plans, designs, and other parts of the EM&CP primarily with respect to rare, threatened and endangered species, wetlands, waterbodies, and the Project's stormwater management.

NYSDEC advises that the Certificate Holder adequately addressed NYSDEC Staff's comments in the revised Segment 16 HDD EM&CP's January 25 and February 23, 2023 supplements.

Public Comments

One public comment was received from an individual on April 20, 2022, prior to the filing of the Segment 16 HDD EM&CP, which relates generally to the Project activities in the Hudson River. The commenter states that the activities associated with this Project are going to cause stirring of PCBs that are present in the Hudson River and that this will result in potential contamination of drinking water for seven mid-Hudson Valley communities. The commenter questions what the NYS Department of Health (NYSDOH) has to say about this Project.

The Project's potential to disturb PCBs in the Hudson River was addressed by the Parties, including NYSDOH, during the extensive review of the Project and the Project was carefully routed to minimize potential adverse environmental impacts. As noted in the CECPN Order, "[a]lthough extensive portions of the route are located under the waters of Lake Champlain and the

Hudson River, the line will transition to upland underground segments in order to avoid portions of the Hudson River designated by the US Environmental Protection Agency (USEPA) as contaminated with polychlorinated biphenyls (PCBs) and to avoid environmentally sensitive River areas, including Haverstraw Bay, an important breeding and spawning habitat for various species.”⁶ In addition, the Certificate contains conditions that require the Certificate Holder to identify the location of any public water supply (PWS) structure and to notify owners of PWS facilities and coordinate construction work within one mile of any intake structure.⁷ The Certificate Holders are also required to establish a fund that provides for each of the PWS facilities identified by the NYSDOH as being within one mile of the underwater cable facility to enable completion of testing, including testing for PCBs.⁸

No other public comments received to date pertain to the portion of the Project covered by the Segment 16 HDD EM&CP that is the subject of this Order. Any pertinent comments previously submitted, and any additional comments received, will be addressed during the review of the relevant future EM&CP segments.

DISCUSSION AND CONCLUSION

As noted above, DPS Staff and NYSDEC Staff raised various concerns and suggestions regarding the details of the proposed Segment 16 HDD EM&CP. The Certificate Holder incorporated and resolved the agencies’ feedback in its January 25 and February 23, 2023 supplemental EM&CP filings.

⁶ CECPN Order, p. 3.

⁷ Id., Certificate Conditions 102 - 105.

⁸ Id., Certificate Condition 106.

Upon review, DPS Staff advises that the revised Segment 16 HDD 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. DPS Staff further advises that in order for the Certificate Holder to meet its construction schedule, the Certificate Holder requested approval of its Segment 16 HDD EM&CP filing as soon as possible.

Upon review, the Commission finds that the Certificate Holder has adequately addressed the concerns raised by DPS and NYSDEC Staff. Based on a review of all the documents submitted, responses received, and supplemental filings made by the Certificate Holder, the revised Segment 16 HDD EM&CP for the Project is approved.

The Commission orders:

1. The Environmental Management and Construction Plan for the Stony Point Transitional Horizontal Directional Drill submitted by Champlain Hudson Power Express, Inc. and CHPE Properties, Inc. (Certificate Holder) on September 29, 2022, and supplemented on January 25 and February 23, 2023, is approved subject to the following conditions.

2. The proposed revision to the Allowed Deviation Zone for work associated with the Stony Point Transitional HDD in Segment 16 is approved.

3. The Certificate Holder shall not commence construction until it has filed the necessary formal agreements with existing utilities and has received a "Notice to Proceed with Construction" letter sent by the Chief of Environmental Certification and Compliance of the Office of Electric, Gas and Water or by a designee.

4. The Certificate Holder shall 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, 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 after 7:00 p.m. (Extended Work), the Certificate Holder, after consultation with the affected municipality, shall seek approval from Department of Public Service (DPS) 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