

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on April 20, 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 PLANS
FOR THE THREE TRANSITIONAL HORIZONTAL DIRECTIONAL DRILL
SUBJECT TO CONDITIONS

(Issued and Effective April 24, 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 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 Three Transitional Horizontal Direction Drill EM&CP (Segment 17 HDD EM&CP) on December 14, 2022. On February 23, 2023, the Certificate Holder filed a revision to the Segment 17 HDD EM&CP and on March 22, 2023, filed a supplement to filings within the Segment 17 HDD EM&CP. This Order only pertains to the Segment 17 HDD EM&CP, as revised, which covers HDDs proposed in the Towns of Putnam (Washington County), Catskill (Greene County), and Congers (Town of Clarkstown, Rockland County), as well as utilization of a temporary laydown yard at Putnam Station (Town of Putnam).

PUBLIC NOTICE

The Certificate Holder filed the Segment 17 HDD EM&CP on December 14, 2022, revised the Segment 17 HDD EM&CP on February 23, 2023, and supplemented filings within the Segment 17 HDD EM&CP on March 22, 2023. 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 (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

⁵ See Segment 17 HDD EM&CP Narrative (filed December 14, 2022), Table 1-1 for a schedule of anticipated EM&CP filings.

Certificate Conditions 151 through 155. As 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 HDDs are located. In accordance with Certificate Conditions 153 and 155, on February 16, 2023, the Certificate Holder filed the affidavits of service and proofs of publication.

The 30-day comment period, required by Certificate Condition 155(a)(8), ended on January 13, 2023, for the Segment 17 HDD EM&CP. No public comments pertinent to the Segment 17 HDD EM&CP were received. 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 Segment 17 HDD EM&CP, as revised, so that the Certificate Holder may begin construction of the associated HDDs in support of the Facility, pursuant to the Certificate.

THE EM&CP, COMMENTS AND RESPONSES

The Certificate Holder's Segment 17 HDD EM&CP, as filed on December 14, 2022, revised on February 23, 2023, and supplemented on March 22, 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 17 HDD 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 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 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 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 17 HDD EM&CP on December 14, 2022.

According to the Certificate Holder, all HDD work will be located within the ADZ for the Segment 17 HDD, except for two locations. The first location is within the Putnam Station HDD, where the permanent HDD cable route deviates slightly to the north of the ADZ, after crossing under the Canadian Pacific Railway. The northernmost cable will begin to deviate just to the east of the railway within the slope leading to Lake Champlain. The southernmost cable will begin to deviate within Lake Champlain. The proposed location for the northernmost cable is approximately 300 feet north of the easternmost edge of the ADZ.

According to the justification provided by the Certificate Holder, "Original designs and drawings planned for a transition vault connection at 90 degrees, with the HDD conduits proceeding due east and the buried overland cables proceeding due south. This 90-degree connection at the transition vault is not technically feasible. Additionally, due to the proximity between the transition vault and the Canadian Pacific Railway, this HDD route would result in minimal vertical ground cover between the Railway and the HDD conduits, which is not desirable from the perspective of either Canadian Pacific or the Certificate Holders. Communication with Canadian Pacific confirmed that a deeper depth of cover was necessary to protect the integrity and safety of the railway." The second location is within the Congers HDD, where a small area at the northeast corner of the limits of disturbance, where the southern HDD entry pit is proposed past the ADZ. The Certificate Holder states that the southernmost cable will be a maximum of 10 feet south of the ADZ. The justification provided by the Certificate Holder for this proposed deviation states, "Due to the proposed location of the transition vault, the HDD conduits have been moved slightly to the west and south. This minor modification

will enable proper tie-in at the transition vault. This change will also ensure that all construction activities and permanent structures remain within the LOD and within the parcel owned by Isabella Rose Reality, LLC, the landowner with whom CHPE has an agreement for this installation.”

No additional permanent environmental, agricultural, or cultural impacts are expected from construction of the Putnam Station and Congers HDD. Therefore, the ADZ exceedance on the Putnam Station and Congers 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 17 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 Plan designs as well as other parts of the EM&CP. In addition, Staff requested revisions or clarification on subject areas including restoration, sound, traffic controls, and cultural resources. DPS Staff’s recommendations were adequately addressed and resolved in the revised Segment 17 HDD EM&CP filed on February 23, 2023, and supplement filed on March 22, 2023.

NYSDEC

NYSDEC Staff reviewed the Segment 17 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 Plan designs and other parts of the EM&CP primarily with respect to rare, threatened and endangered species, wetlands and waterbodies, and the Project’s stormwater management.

NYSDEC advises that the Certificate Holder adequately addressed all NYSDEC Staff's comments in the revised Segment 17 HDD EM&CP filed on February 23, 2023.

DISCUSSION AND CONCLUSION

As noted above, DPS Staff, and NYSDEC Staff raised various concerns and suggestions regarding the details of the proposed Segment 17 HDD EM&CP. The Certificate Holder incorporated and resolved the agencies' feedback in its February 23, 2023 revision and March 22, 2023 supplement to the EM&CP filings.

Based upon its review, DPS Staff advises that the revised Segment 17 HDD EM&CP, as supplemented, 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 Holder has adequately addressed the concerns raised by DPS Staff and NYSDEC. Based on a review of all the documents submitted, responses received, and supplemental filings made by the Certificate Holder, the revised Segment 17 HDD EM&CP for the Project, as supplemented, is approved.

The Commission orders:

1. The Environmental Management and Construction Plan for Three Transitional Horizontal Direction Drilling (HDD) segments (Segment 17 HDD EM&CP) submitted by Champlain Hudson Power Express, Inc. and CHPE Properties, Inc. (Certificate Holder) on December 14, 2022, revised on February 23, 2023, and supplemented on March 22, 2023, is approved subject to the following conditions.

2. The proposed revisions to the Allowed Deviation Zone for work associated with the Three Transitional HDD described in the Segment 17 HDD EM&CP are approved.

3. 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 Electric, Gas and Water 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