

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on October 12, 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 19A
SUBJECT TO CONDITIONS

(Issued and Effective October 13, 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

On August 4, 2023, the Certificate Holders submitted the proposed Hudson River Pre-Lay Mattressing EM&CP for Segment 19A. During the development of the EM&CP, Department of Public Service (DPS) Staff and Department of Environmental Conservation (DEC) Staff provided informal comments and recommendations through technical conferences and meetings. Upon filing, the Certificate Holders and their consultants were also provided with additional informal comments and recommendations for revising the EM&CP. The Certificate Holders filed a supplement to the Segment 19A EM&CP on September 8, 2023, to address DPS and DEC comments. This Order only pertains to the Segment 19A EM&CP, as revised, which covers the installation of concrete mattresses to protect co-located submarine infrastructure in the Hudson River in the City of Kingston and Town of Esopus, Ulster County; City of Poughkeepsie, Towns of Rhinebeck, Poughkeepsie, and Fishkill, Dutchess County; Towns of Newburgh, Highlands, and Cornwall, Orange County; Town of Philipstown, Putnam County; Town of Stony Point, Rockland County; and Towns of Mount Pleasant and Greenburgh, Westchester County.

PUBLIC NOTICE

The Certificate Holders filed their proposed Segment 19A EM&CP on August 4, 2023. On September 8, 2023, the Certificate Holders filed revisions to the Segment 19A 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, off-right-of-way construction access roads, and the overland

⁵ See Segment 19A EM&CP Narrative (filed August 4, 2023), Table 1.1 for a schedule of anticipated EM&CP filings.

components of the Facility, 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 local newspapers of general circulation in the municipalities where the proposed Segment 19A is located. In accordance with Certificate Conditions 153 and 155, on September 8, 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 September 3, 2023, for the Segment 19A EM&CP. Comments pertinent to the Segment 19A EM&CP were submitted and are discussed 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.

DPS Staff and DEC Staff provided informal comments and recommendations and took part in technical meetings with the Certificate Holders.

This Order approves the Segment 19A EM&CP, as revised, so that the Certificate Holders may begin the installation of pre-lay matting within the Hudson River segment, pursuant to the Certificate.

THE EM&CP, COMMENTS AND RESPONSES

The Certificate Holders' Segment 19A EM&CP, as filed on August 4, 2023, and revised on September 8, 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 19A EM&CP identifies and defines the scope of work relevant to this phase for the construction and installation of concrete mattresses to protect co-located submarine infrastructure in preparation for future submarine cable installation in the Hudson River, including: construction access; protective measures for the Hudson River waterbody, threatened and endangered species, co-located infrastructure, 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).

DPS Staff

Prior to the formal filing of the Segment 19A EM&CP, DPS Staff provided input to CHPE regarding proposed pre-laying mattress activities in the Hudson River, and the Certificate Holders satisfactorily addressed DPS Staff's recommendations in the August 4, 2023 Segment 19A EM&CP filing. DPS Staff reviewed the filed Segment 19A EM&CP and is satisfied that it includes all required information, studies, and plans.

NYSDEC Staff

NYSDEC Staff reviewed the Segment 19A 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 outstanding information regarding Remotely Operated Vehicle Mattress Deployment and Diver Assisted Mattress Deployment.

The Commission is advised that the Certificate Holders adequately addressed all NYSDEC Staff's comments in the revised Segment 19A EM&CP as filed on September 8, 2023.

Public Comments

Comments were provided on Segment 19A from the Towboat and Harbor Carriers Association of New York and New Jersey on August 29, 2023, and from the Hudson River Pilot's Association on September 5, 2023, regarding concerns about navigational safety and efficiency resulting from the installation of articulated concrete mattresses. CHPE provided a joint response to the two listed commenting parties on September 6, 2023, explaining that CHPE has been developing the mattress proposal for many years, and during such time has addressed maritime concerns through avoidance and minimization of impacts to maritime resources. Furthermore, CHPE explained that the results of the mattress installation proposal included consultation with key stakeholders as well as the U.S. Army Corp of Engineers (USACE) and U.S. Coast Guard (USCG).

As reported by CHPE in its September 6, 2023 response letter, CHPE provided manufacturer-supplied information regarding mattress installation techniques for cable protection to the USACE and met with the manufacturer's representative on April 22, 2014. The United States Army Corps Permit NAN-2009-01087-M7 issued on June 28, 2023, specifically instructs CHPE to "use articulated protective concrete mattresses, at least 12-inch-thick, with lifting loops, no more than four inches in length, to protect the cable from anchor snags and vessel strikes where the minimum required burial depths cannot be achieved." The permit also requires inspections every five

years to demonstrate that the "cable pair, in its then-existing condition, is still protected by the minimum burial depths required herein and/or the herein authorized concrete mattress armament will continue to prevent anchor strikes from vessel traffic."

The USACE permit also requires that the CHPE team provide a Navigation Risk Assessment (NRA) for their review as well as that of the USCG. The NRA was completed in March of 2016 by Intertek. The NRA included a safety analysis of the articulated protective pipes and concrete mattress armament proposed for use by CHPE and concluded that "the very much localized nature of protection methods on the riverbed means that the likelihood of interaction is minimal." The record in the CHPE Article VII proceeding is clear and the use of mattressing has been approved at both the state and federal level and is an acceptable methodology for submarine Project installation.

It should also be noted that the Commission's April 2013 Certificate Order included a discussion of the environmental impact of concrete mattressing and Certificate Condition 139(d), as well as the Guidelines for Environmental Management and Construction Plan(s) and the Best Management Practices documents, also reference the use of this protective measure.

To alleviate concerns on this important matter, DPS Staff encourages the Certificate Holders to further consult with and provide relevant updates and information to the Towboat and Harbor Carriers Association of New York and New Jersey and the Hudson River Pilot's Association throughout the pre-construction and concrete mattressing phases of construction in the Hudson River.

It should also be noted that, on September 18, 2023, the Towboat and Harbor Carriers Association of New York and New Jersey and the Hudson River Pilot's Association filed a joint letter describing the same concerns explained in the original letters from each association regarding the use of articulated concrete mattresses in the Hudson River. Although these comments were submitted after the comment period closed on September 3, 2023, the Certificate Holders provided a response letter on September 27, 2023. As indicated above, to ease concerns over construction activities of Segment 19A, regardless of the untimely filing of additional comments, we encourage CHPE to continue to consult with the Towboat and Harbor Carriers Association of New York and New Jersey and the Hudson River Pilot's Association.

The Town of Esopus submitted comments regarding general concerns pertaining to the installation of concrete mattresses in the vicinity its Public Water Supply (PWS) Intake in the Hudson River. As indicated in a September 6, 2023 response letter from CHPE to the Town of Esopus, there is no mattress work proposed within at least 2.8 miles of the Town's intake (Port Ewen) and there is no evidence in the record that suggests that the work described in the Segment 19A EM&CP will have any impact on any PWS operations.

Finally, the Hudson River Drinking Water Intermunicipal Council ("Hudson 7")⁶ also submitted comments expressing general concerns regarding the installation of concrete mattresses in the vicinity of PWS Intakes included in its membership. As stated in a response letter dated September 6, 2023, CHPE has voluntarily agreed to notify the PWS

⁶ The membership of the Hudson 7 is the Town of Esopus, Town of Hyde Park, Town of Lloyd, Town and City of Poughkeepsie, Town and Village of Rhinebeck.

at least twenty-four hours in advance of pre-lay matting activities occurring within one mile of any Hudson 7 PWS intake. This notification will be completed both via a telephone call to each operator and an e-mail from CHPE to the Hudson 7 e-mail account.

The response letters referenced above indicate that CHPE has completed consultations with all Hudson 7 communities (including the Town of Esopus) to discuss topics including water testing protocols, construction planning and emergency management, which will be included as part of proposed activities of Segment 19B (installation of cable in the Hudson River). The Certificate Holders have further committed to continue to engage with PWS operators as CHPE develops the EM&CP for Segment 19B.

DISCUSSION AND CONCLUSION

As noted above, the public, DPS Staff, and NYSDEC Staff, raised various concerns and provided suggestions regarding the details of the proposed Segment 19A EM&CP. The Certificate Holders have responded and demonstrated a willingness to continue to address concerns raised by the public. The Certificate Holders incorporated and resolved the agencies' feedback in their September 8, 2023, revisions to the EM&CP filings.

Based upon its review, DPS Staff advises that the revised Segment 19A 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, DPS Staff, and NYSDEC Staff. Based on a review of all

the documents submitted, responses received, and revised filings made by the Certificate Holders, the revised Segment 19A EM&CP for the Project, is approved.

The Commission orders:

1. The Environmental Management and Construction Plan for the Hudson River Pre-Lay Mattressing (Segment 19A) submitted by Champlain Hudson Power Express, Inc. and CHPE Properties, Inc. (Certificate Holders) on August 4, 2023, and revised on September 8, 2023, is approved subject to the following conditions.

2. 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.

3. The Certificate Holders shall attempt to 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 and attempt to avoid construction on Sundays or federal or state holidays. If construction activities are required to occur on a Sunday or holiday or after 7:00 p.m. any day (Extended Work), Certificate Holders shall implement the noise impact avoidance and minimization measures outlined in Section 10 of the EM&CP for such Extended Work. In pre-construction notices distributed to the community, Certificate Holders shall identify where and when Extended Work is anticipated within these Segments, to the maximum extent practicable.

4. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary