

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 SEGMENTS 13, 14, and 15
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

The Certificate Holders filed the Bronx to Astoria, Queens (Segments 13, 14, and 15) EM&CP on August 9, 2023, and filed supplements on August 30, 2023, and September 1, 28, and 29, 2023. This Order pertains to the Segments 13, 14, and 15 EM&CP, as revised, which includes the installation of 2.3 miles of facilities occurring within the Harlem River Yards property, Randall's Island Park, and crosses under the East River to a Consolidated Edison Company of New York, Inc. (Con Edison) property within the Astoria Generating Station.

According to CHPE, it has obtained Revocable Consents from New York City necessary to place infrastructure within municipally owned land (on Randall's Island) and a permit from the New York Office of General Services (NYSOGS) to install facilities under the East River. The Certificate Holders have also obtained or are in the process of obtaining easements from Con Edison and the Galesi Group, who have a long-term lease on the Harlem River Yards property. Property rights documentation must be provided to the Secretary prior to commencement of work on those lands per Certificate Conditions 10 and 142.

Additionally, CHPE plans on utilizing approximately 2.3 acres of land in the Con Edison property adjacent to the Project Corridor for use as a laydown area associated with activities for Segments 13, 14, and 15. Easements from Con Edison have been obtained for use of this land as a temporary laydown yard, which will be used for the duration of construction and upon completion will be returned to the previous condition, or as otherwise requested by the landowner.

⁵ See the Segments 13, 14, and 15 EM&CP Narratives (filed August 9, 2023), Table 1.1 for a schedule of anticipated EM&CP filings.

Use of this laydown yard will include temporary construction trailers with portable restrooms with above-ground holding tanks for water and sanitary waste (to be serviced regularly), work parking, and material storage only.

PUBLIC NOTICE

The Certificate Holders filed their proposed Segments 13, 14, and 15 EM&CP on August 9, 2023. On August 30, 2023, and September 1, and 27, 2023, the Certificate Holders filed revisions to the Segments 13, 14, and 15 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, 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 for nearby locations of proposed construction activities in Segments 13, 14, and 15. 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 8, 2023, for the Segments 13, 14, and 15 EM&CP. No public comments pertinent to the Segments 13, 14, and 15 EM&CP were received. 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.

Staffs of the Department of Public Service (DPS), the City of New York, and the Department of Environmental Conservation (NYSDEC), provided informal comments and recommendations and took part in technical meetings with the Certificate Holders.

This Order approves the Segments 13, 14, and 15 EM&CP, as revised, so that the Certificate Holders may begin overland construction including the installation of transmission facilities within the Harlem River Yards property, Randall's Island Park, under the East River, and on Con Edison property within the Astoria Generating Station.

THE EM&CP, COMMENTS AND RESPONSES

The Certificate Holders' Segments 13, 14, and 15 EM&CP, as filed on August 9, 2023, and revised on August 30, 2023, and September 1, 28, and 29, 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 Segments 13, 14, and 15 EM&CP identifies and defines the scope of work relevant to this construction phase for the installation of electric transmission facilities within properties in Mott Haven, Bronx County, Randall's Island, New York County, and Astoria, Queens 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 13, 14, and 15 EM&CP on August 9, 2023.

According to the Certificate Holders, all work will be located within the ADZ for Segments 13, 14, and 15, except for seven locations within Segment 13 and one location within Segment 14. There are no deviations associated with Segment 15. The plan sheets with deviations from the ADZ are shown in Table 1.3 of the Segment 13 and 14 Narrative and Table 1 of Appendix E.

According to Appendix E of the Segments 13, 14, and 15 EM&CP, the justifications for the deviations from the ADZ are: engineering constraints due to avoidance of potential adverse impacts to utilities and existing drainage features; avoidance of impacts to recreational area adjacent to and within the vicinity of the alignment; to allow more space for temporary access roads; and the need for larger areas of temporary construction in some locations.

No significant increase in permanent environmental or cultural impacts are expected from the construction and operation of the Facility within the eight deviations presented in the Segments 13 and 14 EM&CP.

City of New York

The City of New York (the City) reviewed the Segments 13, 14, and 15 EM&CP and filed comments on September 8, 2023, related to the Salt Marsh Restoration Plan. The City's comments specifically discuss concerns related to non-native species removal, grading, tree replacement, the salt marsh planting plan, fencing, and the monitoring sampling, and analyses plan.

As noted above, CHPE provided supplemental filings of the Segments 13, 14, and 15 EM&CP on August 30, 2023, and September 1 and 28, 2023. The City submitted a letter of support on September 28, 2023, indicating that it is satisfied with the incorporated changes, specifically to the Salt Marsh Restoration Plan, as they ameliorate the concerns set forth in the City's September 8 comments. The City further noted that with the changes, CHPE will be able to better address the impacts to Randall's Island associated with the construction of its Project and that the City supports CHPE's request for approval of the revised EM&CP. Therefore, the Commission is advised that the Certificate Holders adequately addressed all

the City's comments in the Segments 13, 14, and 15 EM&CP, as filed on August 9, 2023, and supplemented on August 30 and September 1 and 28, 2023.

DPS Staff

DPS Staff reviewed the Segments 13, 14, and 15 EM&CP and took part in technical meetings with the Certificate Holders and their consultants. DPS Staff did not have any comments as all of its pre-filing recommendations were adopted in the Segment 13, 14, and 15 EM&CP.

The Commission is advised that DPS Staff's review concluded that the Segment 13, 14, and 15 EM&CP filing is adequate as filed and supplemented and recommends that it be approved by the Commission.

NYSDEC Staff

NYSDEC Staff reviewed the Segments 13, 14, and 15 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 the tidal wetland buffer area, wetland impacts, avoidance, protection, and minimization measures, inadvertent returns, the Salt Marsh Restoration Plan, and wetland delineations.

The Commission is advised that the Certificate Holders adequately addressed all NYSDEC Staff's comments in the Segments 13, 14, and 15 EM&CP, as filed on August 9, 2023, and supplemented on August 30 and September 1, 28, and 29, 2023.

DISCUSSION AND CONCLUSION

As noted above, the City and NYSDEC Staff raised various concerns and suggestions regarding the details of the proposed Segments 13, 14, and 15 EM&CP. The Certificate Holders incorporated and resolved NYSDEC's and the City's feedback in their August 30, 2023, and September 1, 28, and 29, 2023 revisions to the EM&CP filings.

Based upon its review, DPS Staff advises that the Segments 13, 14, and 15 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 City and NYSDEC Staff. Based upon a review of all the documents submitted, responses received, and revised filings made by the Certificate Holders, the Segments 13, 14, and 15 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 within Mott Haven, Bronx County; Randall's Island, New York County; and Astoria, Queens County (Segments 13, 14, and 15 EM&CP) submitted by Champlain Hudson Power Express, Inc. and CHPE Properties, Inc. (Certificate Holders) on August 9, 2023, and supplemented on August 30, and September 1, 28, and 29, 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