

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on December 14, 2023

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
Diane X. Burman
James S. Alesi
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 10
SUBJECT TO CONDITIONS

(Issued and Effective December 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)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 eight 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 Bethlehem to Catskill (Segment 10) EM&CP on October 2, 2023, and filed supplements on November 7, 17, and 29, and December 7, 2023. This Order only pertains to the Segment 10 EM&CP, as revised, which includes the installation of 20.9 miles of facilities occurring within or adjacent to CSX Rail right-of-way (ROW) in the Town of Bethlehem, Albany County to the Town of Catskill, Greene County.

PUBLIC NOTICE

The Certificate Holders filed their proposed Segment 10 EM&CP on October 2, 2023. On November 7, 17, and 29, and December 7, 2023, the Certificate Holders filed revisions to the Segment 10 EM&CP. Public notice of the Segment 10 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; owners of off-right-of-way construction access roads, and the overland components of the Facility; 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 was also 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 Segment 10. In accordance with

⁵ See the revised Segment 10 EM&CP Narrative (filed November 29, 2023), Table 1.1 for a schedule of approved and anticipated EM&CP filings.

Certificate Conditions 153 and 155, on November 30, 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 November 1, 2023, for the Segment 10 EM&CP. No public comments pertinent to the Segment 10 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.

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

This Order approves the Segment 10 EM&CP, as revised, so that the Certificate Holders may begin overland construction including the installation of transmission facilities within or adjacent to the CSX Rail ROW in the Town of Bethlehem, Albany County, to the Town of Catskill, Greene County.

THE EM&CP, COMMENTS AND RESPONSES

The Certificate Holders' Segment 10 EM&CP, as filed on October 2, 2023, and revised on November 7, 17, and 29, and December 7, 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 Segment 10 EM&CP identifies and defines the scope of work relevant to this construction phase for the installation of electric transmission facilities within or adjacent to CSX Rail ROW beginning in the Town of Bethlehem (Albany County) and

ending in the Town of Catskill (Greene 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 Segment 10 EM&CP on October 2, 2023, and as revised on November 29, 2023.

According to the Certificate Holders, all work will be located within the ADZ for Segment 10, except for nineteen locations. The plan sheets with deviations from the ADZ are shown in Table 1.3 of the Segment 10 Narrative and Table 1 of Appendix E.

According to Appendix E of the Segment 10 EM&CP, the justifications for the deviations from the ADZ are: engineering constraints due to rough terrain or steep slopes; avoidance of impacts to streams adjacent to and within the vicinity of the alignment; avoidance of impacts to a recreational area adjacent to and within the vicinity of the alignment; avoidance of potential adverse impacts to utilities located at close proximity to the CSX railroads; avoidance of the Lafarge North America Cement overhead conveyor belt; avoidance of state conservation easements; 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 nineteen deviations presented in the Segment 10 EM&CP.

DPS Staff

DPS Staff reviewed the Segment 10 EM&CP and provided informal comments and recommendations and took part in technical meetings with the Certificate Holders and their consultants. DPS Staff suggested revisions to the EM&CP design plans and other parts of the EM&CP, primarily with respect to sensitive noise receptors, wetland impacts, cultural resources, and wetland delineations.

The Commission is advised that the Certificate Holders adequately addressed all DPS Staff's comments relating to the

Segment 10 EM&CP, as filed on October 2, 2023, and supplemented on November 7, 17, and 29, and December 7, 2023.

NYSDEC Staff

NYSDEC Staff reviewed the Segment 10 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 waterbody and wetland impacts, threatened and endangered species, inadvertent returns, and spoil management.

The Commission is advised that the Certificate Holders adequately addressed all NYSDEC Staff's comments relating to the Segment 10 EM&CP, as filed on October 2, 2023, and supplemented on November 7, 17, and 29, and December 7, 2023.

NYSAGM

NYSAGM Staff reviewed the Segment 10 EM&CP and provided informal comments and recommendations and took part in technical meetings with the Certificate Holders and their consultants. NYSAGM Staff suggested revisions to the design plans and other parts of the Segment 10 EM&CP. These suggestions included, but were not limited to, trenching in agricultural lands, the use of timber matting, topsoil stripping and stockpiling, and agricultural restoration.

The Commission is advised that, aside from the trenching details which are still being developed, the Certificate Holders adequately addressed all NYSAGM Staff's comments in the revised Segment 10 EM&CP as filed on October 2, 2023, and supplemented on November 7, 17, and 29, and December 7, 2023.

DISCUSSION AND CONCLUSION

As noted above, DPS, NYSDEC, and NYSAGM Staff, raised various concerns and suggestions regarding the details of the proposed Segment 10 EM&CP. With the exception of the trenching details in agricultural land, the Certificate Holders incorporated and resolved the agencies' feedback in their November 7, 17, and 29, and December 7, 2023 revisions to the EM&CP filings.

Based upon its review, DPS Staff advises that the Segment 10 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 DPS, NYSDEC, and NYSAGM Staff, with the exception of the trenching details in agricultural land. Based upon a review of all the documents submitted, responses received, and revised filings made by the Certificate Holders, the Segment 10 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 or adjacent to CSX Rail ROW beginning in the Town of Bethlehem (Albany County) and ending in the Town of Catskill (Greene County) (Segment 10 EM&CP) submitted by Champlain Hudson Power Express, Inc. and CHPE Properties, Inc. (Certificate Holders) on October 2, 2023, and supplemented on November 7, 17, and 29, and December 7, 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. 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 Segment 10.

3. Prior to any trenching or HDD activities within 100 feet of sensitive noise receptors, the Certificate Holders shall provide, via an EM&CP minor change, a final "Temporary Sound Barrier Detail" to be utilized at all sensitive noise receptor locations identified within the revised Segment 10 EM&CP.

4. 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, before 7:00 a.m. 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.

5. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary