

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on April 18, 2024

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
James S. Alesi
David J. Valesky
John B. Maggiore
Uchenna S. Bright
Denise M. Sheehan

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 18B
SUBJECT TO CONDITIONS

(Issued and Effective April 18, 2024)

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 several 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

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.

segments which will be contained in separate design packages in the EM&CP filings.⁵

The Certificate Holders filed their proposed Segment 18B EM&CP on January 26, and 29, 2024. On March 13, and April 2, and 8, 2024, the Certificate Holders filed revisions to the Segment 18B EM&CP. This Order only pertains to the Segment 18B EM&CP, as revised, which includes pre-lay grapnel runs, preparation of the pre-installed landfall conduits at Putnam Station (to accept the underwater cables), and the installation and protection of underwater high voltage direct current (HVDC) transmission cables in Lake Champlain. The HVDC transmission cable route in Lake Champlain is approximately 96.5 miles long and begins at the US-Canadian border in the Village of Rouses Point, Town of Champlain, Clinton County, New York and ends in the Hamlet of Putnam Station, Town of Putnam, Washington County, New York.

PUBLIC NOTICE

The Certificate Holders filed their proposed Segment 18B EM&CP on January 26, and 29, 2024. On March 13, and April 2, and 8, 2024, the Certificate Holders filed revisions to the Segment 18B EM&CP. Public notice of the Segment 18B 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 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

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 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 18B. In accordance with Certificate Conditions 153 and 155, on March 8, 2024, 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 February 26, 2024, for the Segment 18B EM&CP. A letter, dated January 5, 2024, was filed on behalf of 1759 Ltd., owner of the Fort Ticonderoga Ferry. Both the Certificate Holder and 1759 Ltd. filed subsequent responses. This exchange is further detailed below in the "Public Comments" section of this Order. 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) 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 Segment 18B EM&CP, as revised, so that the Certificate Holders may begin the preparation of the pre-installed landfall conduits at Putnam Station (to accept the underwater cables), pre-lay grapnel runs, and installation and protection of underwater high voltage direct current (HVDC) transmission cables within the Lake Champlain segment, pursuant to the Certificate.

THE EM&CP, COMMENTS, AND RESPONSES

The Certificate Holders' Segment 18B EM&CP, as filed on January 26, and 29, 2024, and revised on March 13, and April

2, and 8, 2024, 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 18B EM&CP identifies and defines the scope of work relevant to this construction phase for the installation and protection of underwater electric transmission cables in Lake Champlain, including construction access; protective measures for the Lake Champlain 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&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 cable 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. Additionally, as set forth in Certificate Condition 156(b), "for the HVDC Transmission System installed in Lake Champlain ..., the Allowed Deviation Zone shall be anywhere within those bodies of water where the water depth exceeds twenty (20) feet at mean low water." 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 3-B to the Segment 18B EM&CP on January 26, 2024.

According to the Certificate Holders, all work will be located within the ADZ for Segment 18B, except for twelve locations. The plan sheets with deviations from the ADZ are shown in Table 1.3 of the Segment 18B Narrative and Table 2-1 of Appendix 3-B.

According to Appendix 3-B of the Segment 18B EM&CP, the justifications for the deviations from the ADZ are: engineering constraints due to steep slopes; avoidance of cultural resources; avoidance of existing infrastructure; alignment adjustments needed to pass under the Lake Champlain bridge; and to maintain a suitable distance from the New York-Vermont boarder.

No significant increase in permanent environmental or cultural impacts are expected from the construction and operation of the Facility within the twelve deviations presented in the Segment 18B EM&CP.

DPS Staff

DPS Staff reviewed the Segment 18B 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 and the need for potential noise mitigation measures, unanticipated hazardous material discovery, cultural resources, information regarding potential relocation of federal aids to navigation, general status of agreements with Co-located Infrastructure owners and specific status related to crossing of the Fort Ticonderoga Ferry facilities, lighting of vessels, and information on water depth of the lake at cable installation locations.

The Commission is advised that the Certificate Holders adequately addressed all DPS Staff's comments relating to the Segment 18B EM&CP, as filed on January 26, and 29, 2024, and revised on March 13, and April 2, and 8, 2024.

NYSDEC Staff

NYSDEC Staff reviewed the Segment 18B 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 on the following topics: "Spill Prevention and Control Plan;" availability of the "Post-Installation Cable Inspection" report; and a request for additional information on the "Very Small Quantity Generator Hazardous Waste Management Plan."

The Commission is advised that the Certificate Holders adequately addressed all NYSDEC Staff's comments relating to the Segment 18B EM&CP, as filed on January 26, and 29, 2024, and the Certificate Holders filed revisions to the Segment 18B EM&CP on March 13, and April 2, and 8, 2024.

Public Comments

Comments were provided on Segment 18B from 1759 Ltd., operator of the Fort Ticonderoga Ferry (Ferry), and the U.S.

Coast Guard (USCG). Comments from 1759 Ltd. stated its opposition to the Segment 18B EM&CP because of its concern regarding the impact of the Project on the Ferry's business. The comments relayed the on-going negotiations between 1759 Ltd. and CHPE regarding the Certificate Holders' installation of its cable proximate to the Ferry and 1759 Ltd.'s assertion that the Certificate Holders do not have the right to interfere with the Ferry's operations. The Certificate Holders filed comments in response disputing asserts made by 1759 Ltd. and clarifying that, while a crossing agreement is the preferred option, it is not required. In further responses, 1759 Ltd. filed a subsequent letter reiterating many of its initial claims and requesting that the Commission (1) deny the Segment 18B EM&CP unless and until a crossing agreement is in place, (2) expressly conditioning approval of the Segment 18B approval on execution of a crossing agreement, or (3) requiring the Certificate Holders to file an amendment to the Segment 18B EM&CP detailing how the Project will cross the Ferry if a crossing agreement is not executed. On March 27, 2024, the Office of General Services filed a letter noting that 1759 Ltd. rights derive from the legislatively authorized franchise and its recommendation that the parties work collaboratively.

It should be noted that the Ferry is not "Co-located Infrastructure" as defined by Certificate Condition 27.⁶ Accordingly, the requirements of Certificate Condition 162 regarding documentation of the agreement between the Certificate Holders and the owners and/or operators of co-located

⁶ CECPN Order, Certificate Condition 27 ("[Co-located Infrastructure] shall consist of electric, gas, telecommunication, water, wastewater, sewer, and steam infrastructure and appurtenant facilities and associated equipment, whether above ground, below ground, or submerged ...").

infrastructure are not applicable to the Ferry. However, we agree with the Certificate Holders that this is the preferred option if feasible.

Comments from the USCG stated that the USCG intends to prepare a Memorandum of Agreement with the Certificate Holders to facilitate and fund the temporary relocation of Federal Aids to Navigation near cable installation.

DISCUSSION AND CONCLUSION

As noted above, DPS and NYSDEC Staff, raised various concerns and suggestions regarding the details of the proposed Segment 18B EM&CP. The Certificate Holders incorporated and resolved the agencies' feedback in their March 13, and April 2, and 8, 2024 revisions to the EM&CP filings.

Based upon its review, DPS Staff advises that the Segment 18B 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. With respect to the on-going dispute between the Certificate Holders and 1759 Ltd., DPS Staff specifically advises that the Segment 18B EM&CP, as revised, meets these requirements. If the resolution of the on-going dispute impacts the Segment 18B EM&CP approved herein, the Certificate Holders are reminded that such changes must be processed in accordance with Certificate Condition 158.

Upon review, the Commission finds that the Certificate Holders have adequately addressed the concerns, raised by DPS and NYSDEC. Based upon a review of all the documents submitted, responses received, and revised filings made by the Certificate Holders, the Segment 18B 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 for pre-lay grapnel runs, preparation of the pre-installed landfall conduits at Putnam Station (to accept the underwater cables), and the installation and protection of an underwater high voltage direct current (HVDC) transmission cables in Lake Champlain submitted by Champlain Hudson Power Express, Inc. and CHPE Properties, Inc. (Certificate Holders) on January 26, and 29, 2024, and revised on March 13, April 2, and April 8, 2024, is approved subject to compliance with Ordering Clauses 2 and 3 of this Order.

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 their designee.

3. The Certificate Holders shall attempt to schedule construction activities proximate to potentially impacted sensitive receptors 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; on a federal or State holiday; or before 7:00 a.m. or after 7:00 p.m. any day (Extended Work) proximate to potentially impacted sensitive receptors, Certificate Holders shall implement the noise impact avoidance and minimization measures outlined in the EM&CP for such Extended Work as practicable. 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. If the Certificate Holders receive complaints regarding noise, the Certificate

Holders shall inform the Department of Public Service within 48 hours of receipt of such complaint and provide status of response.

4. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary