

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on June 20, 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 GRANTING AMENDMENT OF CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED SUBJECT TO CONDITIONS

(Issued and Effective June 21, 2024)

BY THE COMMISSION:

INTRODUCTION

On April 18, 2013, the Public Service Commission
(Commission) granted a Certificate of Environmental
Compatibility and Public Need (Certificate) to Champlain Hudson
Power Express, Inc. (CHPEI) and CHPE Properties, Inc. (CHPE)

(collectively, the Certificate Holders),¹ authorizing, subject to conditions, the construction of a High Voltage, Direct Current (HVDC) transmission line extending approximately 330 miles from the New York/Canada border to a proposed DC-to-Alternating Current (AC) converter station in Astoria, Queens (the Project or Facility) pursuant to Public Service Law (PSL) Article VII, and an approximately 3-mile long 345 kV AC cable within the streets of Astoria, Queens to a point-of-interconnection with the Consolidated Edison Rainey substation (the Astoria-Rainey cable).²

The HVDC transmission line will be buried within waterways and in upland areas along existing highway, street, or railroad rights-of-way. The Project's HVDC cable system will consist of two solid dielectric (i.e., no insulating fluids) electric cables, each approximately six inches in diameter. The cables will be installed either underwater or underground along the entire length of the Project route. The Project will have the capacity to transmit 1,250 megawatts (MWs) of electricity into the New York City load pocket. It is anticipated that the

¹ 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).

² Case 10-T-0139, Order Granting Certificate of Environmental Compatibility and Public Need (issued April 18, 2013) (CECPN Order).

electricity transmitted by the Project will be primarily hydroelectric power.

As described more fully below, over the past three years, the Certificate Holders obtained several Commission-approved Certificate amendments related to certain Certificate conditions and route modifications. On February 9, 2024, the Certificate Holders filed a petition, pursuant to PSL §123(2), to amend Certificate Condition 95(a)(i) to allow for a minimum top of cable depth of at least nine feet below the federally authorized depth of the Federal Navigation Channel (Navigation Channel Amendment Petition).

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

³ CECPN Order, Certificate Conditions 6, 7, and 145 through 164.

⁴ Id., Certificate Condition 6.

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.

The Certificate Holders filed their proposed Segment 19B EM&CP on April 8, 2024. On May 31, 2024, the Certificate Holders filed revisions to the Segment 19B EM&CP. This Order pertains to the Segment 19B EM&CP, as revised, which includes the installation and protection of underwater HVDC cables in the Hudson River. Segment 19B is divided into two geographic segments: (1) the Cementon-Stony Point Hudson Marine Segment, which is approximately 67.5-miles long beginning in the Town of Catskill, Greene County, New York and ending in the Town of Stony Point, Rockland County, New York; and (2) the Congers-Harlem Hudson Marine Segment, which is approximately 21.6-miles long beginning in the Hamlet of Congers, Town of Clarkstown, Rockland County, New York and ending at the mouth of the Harlem River.

Through this Order, the Commission approves the requested Navigation Channel Amendment Petition authorizing the changes to Certificate Condition 95(a)(i), consistent with the discussion herein, and the Segment 19B EM&CP.

BACKGROUND

The Certificate Holders filed a Petition for an Amendment of the Certificate, pursuant to PSL §123(2), on September 30, 2019, which sought changes to certain conditions to the Certificate (Amendment 1 Petition). More specifically, the Amendment 1 Petition sought approval of changes related to (1) updating previous filings regarding Project construction, (2) avoiding delay in Project construction related to the issuance of Canadian permit(s) (Certificate Condition 11), and (3) ensuring efficient processing of construction and post-construction filing requirements. The Commission granted, in part, the Amendment 1 Petition on March 20, 2020, but reserved judgement on the portion of the Amendment pertaining to

Certificate Condition 11. After the Certificate Holders submitted additional information, the Commission granted the remaining portion of the Amendment 1 Petition revising Certificate Condition 11 on September 21, 2020.

On December 6, 2019, the Certificate Holders filed a petition for a second amendment to the Certificate (Amendment 2 Petition) seeking approval of certain preferred alternatives (Preferred Alternatives) to the certified Project layout. The Preferred Alternatives included minor routing changes and the relocation of the converter station site that were needed "to, among other things, avoid shallow water engineering challenges, reduce rock removal and wetland impacts, eliminate disruption to downtown Schenectady, forego reliance on an aging railroad bridge, accommodate community concerns, and simplify the design of the Converter Station and the connecting electrical facilities." The Amendment 2 Petition was granted on August 13, 2020.

The Certificate Holders filed a petition for a third amendment to the Certificate (Amendment 3 Petition) on October 9, 2020, seeking approval of proposed modifications to two portions of the certified Project layout. The first requested modification sought authorization to expand the Allowed Deviation Zone (ADZ) in New York City to allow installation of the Project cables to bypass the majority of the Harlem River Yard (HRY) in the southeasternmost portion of the Bronx, through installation of the cables underwater across the Bronx Kill and underground in Randall's Island Park, Borough of Manhattan, directly across from the HRY. The second requested modification sought authorization to augment the ADZ in Rockland County to allow five splice vault locations on private land immediately adjacent to the revised ROW within NYS Route 9W,

instead of in the active travelled portion of Route 9W ROW. The Amendment 3 Petition was granted on January 26, 2021.

On January 29, 2021, the Certificate Holders filed a petition for a fourth amendment to the Certificate (Amendment 4 Petition) seeking authorization to increase the capacity of the Project from 1,000 MW to 1,250 MW with associated modifications to the Project's transmission components and to increase the footprint of the Astoria converter station. In addition, in a supplement to the Amendment 4 Petition filed on March 24, 2021, the Certificate Holders requested clarification of Certificate Condition 22(a) regarding the 100-year floodplain. The Amendment 4 Petition was granted on May 14, 2021.

The Certificate Holders filed a petition for a fifth amendment (Amendment 5 Petition) on June 4, 2021, seeking authorization for changes to the configuration of the HVAC interconnection between the Project's converter station in Astoria, Borough of Queens, and the interconnection point located at the Astoria Annex Substation owned and operated by the New York Power Authority (Astoria HVAC Connection).⁶ The proposed changes included reconfiguration of the Astoria HVAC Connection from an underground to an overhead double-circuit 345 kV transmission line. The Amendment 5 Petition was granted on February 17, 2022.

On December 6, 2021, the Certificate Holders filed a petition for a sixth amendment (Amendment 6 Petition) seeking to amend Certificate Condition 165 to accelerate the schedule of the payments of the \$117 million funding required to be made to the Hudson River and Lake Champlain Habitat Enhancement,

⁶ The Certificate Holders also sought approval to construct a new IP and converter station in the Town of New Scotland but withdrew their request on November 5, 2021.

Restoration, and Research/Habitat Improvement Project Trust. The Amendment 6 Petition was granted on March 16, 2022.

On September 7, 2022, the Certificate Holders filed a petition for a seventh amendment (Amendment 7 Petition) seeking to amend Certificate Condition 114 to allow refueling of horizontal drilling (HDD) equipment at HDD locations within 100 feet of wetlands and streams while following a refueling protocol. The Amendment 7 Petition was granted on December 15, 2022.

On March 31, 2023, the Certificate Holders filed a petition for an eighth amendment (Amendment 8 Petition) seeking approval of proposed changes to (1) an approximately 0.8-mile segment of the Project route approved in the Town and Village of Catskill and (2) revisions to certificate conditions related to notification to co-located infrastructure (CI) owners in situations where such owners cannot be identified or located, or where disputes arise with CI owners which require further efforts to resolve. The Certificate Holders filed a revised Amendment 8 Petition on May 26, 2023, withdrawing the request for the CI amendment. The Amendment 8 Petition concerning the Catskill reroute was granted April 18, 2024.

On July 28, 2023, the Certificate Holders filed a petition for a ninth Amendment (Amendment 9 Petition) seeking to amend Certificate Condition 162(i) to add conditions to address instances where, despite all commercially reasonable efforts, CI owners cannot be identified or are unresponsive. The Amendment 9 Petition was granted on October 13, 2023.

On February 9, 2024, the Certificate Holders filed the Navigation Channel Amendment to amend Certificate Condition 95(a) (i) to allow for a minimum top of cable depth of at least nine feet below the federally authorized depth of the Federal Navigation Channel in place of the currently required fifteen

feet. In the Navigation Channel Amendment Petition, the Certificate Holders explain that the change is necessary to promote consistency between the State and federal permits. Currently, Certificate Condition 95(a)(i) requires that the cables be installed to a depth of at least fifteen feet below the federally authorized depth of the Federal Navigation Channel. However, the permit granted by the U.S. Army Corps of Engineers (USACE) issued under the Clean Water Act Section 404 (33 U.S.C. §1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. §403) (USACE Permit) requires a burial depth of nine feet below the authorized channel depth within the Federally Maintained Navigation Channel in the Hudson River.

The Certificate Holders propose amending Certificate Condition 95(a)(i) as follows:

- (i) Where the cables shall be located within the limits of the maintained Federal Navigation Channels (a) in the Hudson and East Rivers, the Certificate Holders shall install the cables to a minimum top of cable depth of at least ~~fifteen (15)~~ nine (9) feet below the federally-authorized depth of the Federal Navigation Channel and (b) in the Harlem River, the Certificate Holders shall install the cables to those elevations below the federally-authorized depth of such Channel that have been specified by the USACE in Permit NAN-2009-0189 and by the New York State Department of State in its determination of March 3, 2014 made pursuant to the federal Coastal Zone Management Act[.]⁷

⁷ Certificate Condition 95(a)(i) was previously amended as part of Amendment 1 Petition. Case 10-T-0139, Order Granting, in Part, Amendment of Certificate of Environmental Compatibility and Public Need Subject to Conditions (issued March 20, 2020).

In addition to creating consistency between the State and federal requirements, CHPE further explains that the minimum burial depth change is needed because of significant engineering and environmental constraints that make adherence to the 15-foot burial depth in Certificate Condition 95(a)(i) impracticable. The Certificate Holders explain that the currently available installation technology has limitations, the jet plow and associated equipment the Certificate Holders intend to utilize have a maximum burial depth capability of nine feet. Because of this, the Certificate Holders assert that Certificate Condition 95(a)(i) prohibits them from utilizing the jet plow or remedial burial tool for installation within any Maintained Federal Navigation Channel. The Certificate Holders further assert that this effectively requires that every crossing or location of the cable within the Maintained Federal Navigation Channel would need to be installed using more intrusive and intensive means.

The Certificate Holders also assert that it has been demonstrated that use of the jet plow will allow for adherence to water quality standards and limit turbidity and disturbance of sediments to the maximum extent practicable in addition to limiting other impacts associated with installation.

According to the Certificate Holders, the proposed amendment furthers the Commission's objectives of protecting the environment and the Hudson River as an ecological and commercial resource, while still protecting the Maintained Federal Navigation Channel in a manner approved by the USACE. The amendment will also ensure that the CHPE Facility will be constructed and delivered on schedule, as necessary to assure the continued reliability of the New York State electric grid⁸

⁸ Citing the NYISO 2022 Reliability Needs Assessment, p. 12.

and achieve Climate Leadership and Community Protection Act targets.

On May 31, 2024, the Certificate Holders filed a Navigation Risk Assessment Revision 7 (Updated NRA) to calculate the probability of an interaction occurring between vessels using the waterway and the CHPE cables as part of its revised Segment 19B EM&CP. The Updated NRA showed the probability of anchor interaction with the Facility is between 1 in 1,000 years and 1 in 10,000 years in the Upper Hudson, and, with the exception of an approximately 1,300-foot section of the cable route where the probability is 1 in 488, the probability is the same in the Lower Hudson.

On June 7, 2024, the Department of State (NYSDOS) issued a letter (June 2024 Modification Letter) modifying its June 8, 2011 Conditional Concurrence with Consistency Certification (June 2011 Conditional Concurrence). The June 2024 Modification Letter explains that CHPE identified four locations where the proposed cable will be located in the Maintained Federal Navigation Channel, and requested that, for those four locations, NYSDOS remove the portion of Condition 1 to the June 2011 Conditional Concurrence pertaining to the 15-foot burial requirement and allow the cable to be buried to at least nine feet below the authorized channel depth. The June 2024 Modification Letter states that NYSDOS found that CHPE's materials provided substantive justification for the request. Accordingly, NYSDOS determined that CHPE's request would not result in coastal effects substantially different from those previously reviewed. NYSDOS, therefore, modified Condition 1 of its June 2011 Conditional Concurrence to remove the portion of Condition 1 that required a 15-foot burial depth in the Maintained Federal Navigation Channel to now allow a 9-foot

burial below the authorized channel depth in those four identified locations and distances.

NOTICE AND PUBLIC COMMENTS

With respect to the Navigation Channel Amendment Petition, a "Notice Soliciting Comments" was issued on February 12, 2024, which requested public comments by March 3, 2024. CHPE provided notice of the Navigation Channel Amendment Petition as required by PSL §122(2) and pursuant to the Commission's rules at 16 NYCRR §85-2.10(c). In accordance with the Commission's Rules at 16 NYCRR §85-2.10(c), the Certificate Holders provided affidavits of service and proofs of publication of the Notice of the Petition to Amend the Certificate issued by the Commission on April 18, 2013, relating to their Navigation Channel Amendment Petition.

The Certificate Holders filed their proposed Segment 19B EM&CP on April 8, 2024. On May 31, 2024, the Certificate Holders filed revisions to the Segment 19B EM&CP. Public notice of the Segment 19B 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 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 19B. In accordance with Certificate Conditions 153 and 155, on May 28, 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 May 16, 2024, for the Segment 19B EM&CP.

Numerous public comments were received on both the Navigation Channel Amendment and the Segment 19B EM&CP, as discussed below. With respect to the Segment 19B EM&CP, 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.

THE EM&CP, AMENDMENT, COMMENTS, AND RESPONSES

The Certificate Holders' Segment 19B EM&CP, as filed April 8, 2024, and revised on May 31, 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 19B 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 the Hudson River, including construction access; protective measures for the Hudson River waterbody, threatened and endangered species, and 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 ... the Hudson ..., 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 "[a]ll 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 19B EM&CP on April 8, 2024, and revised on May 31, 2024.

According to the Certificate Holders, all work will be located within the ADZ for Segment 19B, except for 29 locations. The plan sheets with deviations from the ADZ are shown in Table 1 of the Segment 19B Appendix 3-B.

According to Appendix 3-B of the Segment 19B EM&CP, the justifications for the deviations from the ADZ are:

engineering constraints due to steep slopes; avoidance of shallower waters for preferred deeper waters; avoidance of rock outcrops; avoidance of shoals; avoidance of riverbed anomalies and debris; avoidance of the Federally Maintained Navigation Channel where possible; avoidance of anchorage area; avoidance of high risk anchor strike areas defined in the NRA; avoidance of cultural resources; avoidance of existing infrastructure, including water intakes; and to maintain a safe distance from aids to navigation as requested by the United States Coast Guard (Coast Guard).

No significant increase in permanent environmental or cultural impacts are expected from the construction and operation of the Facility within the 29 deviations presented in the Segment 19B EM&CP.

DPS Staff

DPS Staff reviewed the Segment 19B EM&CP and provided informal comments and recommendations, and took part in technical meetings with the Certificate Holders and their consultants. DPS Staff provided comments and/or 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, public water supply intakes, and the general structure of the plan and profile drawings.

The Commission is advised that the Certificate Holders adequately addressed all DPS Staff's comments relating to the Segment 19B EM&CP, as filed on April 8, 2024, and revised on May 31, 2024.

NYSDEC Staff

NYSDEC Staff reviewed the Segment 19B EM&CP Navigation Channel Amendment and provided informal comments and recommendations, and took part in technical meetings with the Certificate Holders and their consultants. NYSDEC Staff provided comments and/or suggested revisions to the EM&CP on the following topics: landward HDD locations associated with the Hudson River, locations of sand waves, the general process regarding cable splicing and jointing, development of the as-built survey, post-installation cable inspection process, removal of sanitary waste from Project vessel, verification that emergency spill kits are available, general structure of the plan and profile drawings, comments on ADZ excursions/justifications, and magnetic field standard operating procedure. NYSDEC Staff also provided general comments on the amendment related to the installation of facilities within the Federal Navigation Channel. NYSDEC Staff also reiterated that the requirements of Certificate Condition 95(a)(ii) still applies and installation depths outside of the Maintained Federal Navigation Channel to be "at least six (6) feet below the sediment water interface or if sand waves are present the trough of said waves."

The Commission is advised that the Certificate Holders adequately addressed all NYSDEC Staff's comments relating to the Segment 19B EM&CP, as filed on April 8, 2024, and revised on May 31, 2024.

Public Comments

Numerous public comments were received regarding both the Navigation Channel Amendment and the Segment 19B EM&CP. Given the overlap between these items, the public comments are addressed here together. Several members of the public filed

comments opposing a burial depth less than fifteen feet. Several members of the public, including union laborers and elected officials, also filed comments generally supporting the Project. Several municipalities, including the Towns of Ballston, Catskill, Haverstraw, Stony Point, and Clarkstown, and the Villages of Haverstraw and West Haverstraw, also filed comments generally supporting the Project and noting that CHPE had been a good partner.

Scenic Hudson, the Town of Esopus, and the Towboat and Harbor Carriers Association of NY/NJ filed comments specifically opposing the Navigation Channel Amendment. Scenic Hudson noted in particular that the burial depth in the Certificate is not inconsistent with the burial depth in the USACE Permit and that CHPE had several years to request this amendment. The Town of Esopus raised concerns that a change in the burial depth within the Maintained Federal Navigation Channel would increase the potential for damage to its water supply infrastructure.

The City of Kingston, Towns of Cortlandt and Ossining, and Village of Ossining raised concerns with the safety of a burial depth less than 15 feet, including both navigation safety and safety to species, as well as raising concerns with the timing of the Navigation Channel Amendment. The City of Peekskill, and Villages of Tarrytown, Ossining, and Sleepy Hollow oppose the change in burial depth, commented that the EM&CP must include information about the location of post-lay concrete mattresses, and raised that CHPE's public involvement program plan must be updated to include all municipalities adjacent to the Hudson River. Consistent with its comments on the Navigation Channel Amendment, the Town of Esopus also raised concerns with drinking water impacts with respect to the Segment 19B EM&CP. Riverkeeper and Scenic Hudson filed similar comments that CHPE had not coordinated with the Clean Path New York

Project on the Segment 19B EM&CP and had not accounted for cumulative impacts of the projects, as well as raising concerns with the burial depth, a lack of information on monitoring studies, and a lack of information on the location of post-lay concrete mattresses. Riverkeeper also raised several questions and concerns about contaminants in the Hudson River and the specifics of the cable installation.

On April 26, 2024, CHPE filed a response to comments on the Navigation Channel Amendment. CHPE explained that, in the marine environment, "burial depth" is better understood as "separation distance" below the authorized Maintained Federal Navigation Channel. CHPE further explained that permit requirements within the Maintained Federal Navigation Channel that reference a required burial depth are referring to a required separation distance between the bottom of the channel and the top of the cables. CHPE asserts that environmental studies were based on an assumed minimum burial depth of the cables and not upon any additional separation distance from the bottom of the Maintained Federal Navigation Channel, so any change to the separating distance that does not affect minimum burial depths does not affect the conclusions of those studies. CHPE further asserts that concerns about burial depth and location within the Maintained Federal Navigation Channel were extensively addressed as part of the USACE permitting process and that the USACE considered these concerns and concluded that the appropriate depth of installation is generally seven feet. With respect to navigation safety, the Certificate Holders highlight the Navigation Risk Assessment (NRA) it performed in 2016 and has updated in 2017 and 2024. The Certificate Holders assert that the NRA demonstrates that anchor interaction is unlikely. The Certificate Holders also assert that the

Navigation Channel Amendment will not impact public water intakes.

The Coast Guard submitted comments on the Segment 19B EM&CP, particularly the most recent NRA. The Coast Guard noted that it has been working with the Certificate Holders for many years, including providing feedback on Segment 19B. The Coast Guard further noted that its feedback has been incorporated into the Segment 19B EM&CP. The Coast Guard also provided comments on on-going coordination regarding Federal Aids to Navigation, agreement with proposed route deviations, and the NRA.

On May 31, 2024, CHPE filed a comprehensive response to public comments on the Segment 19B EM&CP. In addition to providing a general summary and response to public comments, CHPE provided responses to specific concerns raised in the public comments. On invasive species, the Certificate Holders noted that Segment 19B does not involve vessels transiting through the Erie and Champlain Canals. On potential encounter of contaminated sediments during construction, the Certificate Holders explained the requirements of the Certificate and Water Quality Certification for ensuring work adheres to water quality standards, the Suspended Sediment and Water Quality Monitoring Plan, and the studies it undertook related to concerns from Public Drinking Water Supply Intake Owners. With respect to concerns regarding electric and magnetic fields (EMF)⁹ and aquatic impacts, the Certificate Holders reiterate that the Joint Proposal assumed a burial depth less than that in the Segment 19B EM&CP, highlights National Oceanic and Atmospheric Administrative (NOAA) National Marine Fisheries Service (NMFS) conclusions that effects of this Project would be insignificant

⁹ CHPE explains that, given that these are buried cables, comments referring to EMF should refer to magnetic fields.

and discountable and that the Project is not likely to adversely affect Endangered Species Act list species, and explains that comments from Scenic Hudson and Riverkeeper on Segment 19B are inconsistent with those organizations' positions on the Joint Proposal. In response to comments regarding the Public Involvement Plan (PIP), the Certificate Holders asserted that it voluntarily prepared a PIP for each EM&CP Segment and that the Certificate does not impose specific requirements for public meetings. CHPE further asserted that it went beyond the requirements of the Certificate with respect to notices to municipalities and complaint resolution. In response to concerns regarding concrete mattresses, the Certificate Holders explained that the exact number of mattresses to be installed is unknown because installation of mattresses is a remedial measure. In response to continued concerns regarding impacts to navigation and the Navigation Channel Amendment, the Certificate Holders explained the safety measures to be taken during construction. CHPE also explained that the NRA indicates that in the Upper Hudson between Cementon and Stony Point, the probability of an anchor interaction with the Facility is between 1 in 1,000 and 1 in 10,000 years while in the Lower Hudson there is an approximately 1,300 foot portion where the probability of an interaction is 1 in 488 years, and, in the remainder of the section, the probability of interaction is between 1 in 1,000 and 1 in 10,000 years. The Certificate Holders provided a detailed response to comments on Public Water Supply Intakes indicating which recommendations were incorporated in the Segment 19B EM&CP and explaining why some recommendations were not adopted.

LEGAL AUTHORITY

PSL §122(4) provides that “[a]n application for an amendment of a certificate shall be in such form and contain such information as the commission shall prescribe. Notice of such an application shall be given as set forth in subdivision two.” In addition, under PSL §123(2), “[o]n an application for an amendment of a certificate, the commission shall hold a hearing in the same manner as a hearing is held on an application for a certificate if the change in the facility to be authorized would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of such facility other than as provided in the alternates set forth in the application.”

Inasmuch as the Navigation Channel Amendment Petition related to Condition 95(a)(i) does not propose any change in the

location of the Facility or involve any material increase in any environmental impact, no hearing is required.¹⁰

DISCUSSION

Navigation Channel Amendment

The Certificate Holders seek approval of changes to Certificate Condition 95(a)(i) to allow for a minimum top of cable depth of at least nine feet below the federally authorized depth of the Federal Navigation Channel in place of the currently required fifteen feet. The Certificate Holders state that the amendment is necessary to promote consistency between the State and federal permits. Currently, Certificate Condition 95(a)(i) requires that the cables be installed to a depth of at least fifteen feet below the federally authorized depth of the Federal Navigation Channel.

Based on a thorough review of the record from the Article VII Application through the revised Segment 19B EM&CP,

¹⁰ See, e.g., Case 08-T-0034, Application of Hudson Transmission Partners, LLC for a Certificate of Environmental Compatibility and Public Need for a 345 kV Submarine/Underground Electric Transmission Link Between Manhattan and New Jersey, Order Granting Amendments to Certificate of Public Convenience and Necessity (issued November 3, 2011) and Order Approving Certificate Amendments and Directing Compliance (issued January 12, 2017); and Case 02-T-0036, Application of Neptune Regional Transmission System LLC for a Certificate of Environmental Compatibility and Public Need for the Construction of two 600 megawatt (+/- 500 kV) High-voltage Direct Current Submarine/Underground Electric Transmission Cables to Connect Load Centers in New York with Transmissions and Generation Resources in New Jersey, Order Granting Amendment of Certificate of Environmental Compatibility and Public Need (issued August 26, 2005), p. 4 (finding that an amendment to a certificate condition does not require a hearing where the proposed amendment "will not result in any material increase in any environmental impact or a substantial change in the location of the transmission facility.").

the amendment to allow Certificate Holders to install cables to a minimum top of cable depth of nine feet below the federally authorized depth of the Federal Navigation Channel in the Hudson River is appropriate. In particular, the Joint Proposal exhibits, including environmental studies assuming a burial depth within the Hudson River less than that requested in the Navigation Channel Amendment, demonstrate that the amendment is not anticipated to result in a material increase in any environmental impact.¹¹ The NRA also shows that the probability of interaction between the cables and a vessel anchor is sufficiently small enough to ameliorate concerns about reliability and navigation safety. DPS Staff also advises that, in consultations with the Certificate Holder, CHPE indicated that review of a representative location to compare a 9-foot burial with a 15-foot burial showed that, while a burial depth greater than nine feet would further reduce the probability of anchor interaction, interpretation of the data supports the conclusion that the major reduction in anchor interaction probabilities is achieved by burying to nine feet.

In light of Certificate Condition 95(a)(iii), the amendment is granted to the extent current or future NYSDOS concurrence allows for installation of cables to a minimum top of cable depth of nine feet below the federally authorized depth of the Federal Navigation Channel in the Hudson River. As the current NYSDOS concurrence in the form of the 2024 Modification Letter indicates that there is a 15% contingency, where such contingency is utilized, CHPE must notify DPS Staff within a week of such installation.

¹¹ See, e.g., Case 10-T-0139, Joint Proposal (filed February 24, 2012), p. 42, and Joint Proposal Exhibit 100 03-18-11 HDR Letter to DOS (filed February 24, 2012).

Segment 19B EM&CP

As noted above, DPS Staff and NYSDEC, raised various concerns and suggestions regarding the details of the proposed Segment 19B EM&CP. The Certificate Holders incorporated and resolved the agencies' feedback in their May 31, 2024, revisions to the EM&CP filings.

Based upon its review, DPS Staff advises that the Segment 19B EM&CP, as revised, 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 public comments regarding Segment 19B, as discussed above, the change from fifteen feet to nine feet within the Maintained Federal Navigation Channel is appropriate. In reviewing the remaining public comments, the Commission finds that CHPE has appropriately incorporated those comments necessitating revisions.

Upon review, the Commission finds that the Certificate Holders have adequately addressed the concerns, raised by DPS Staff and NYSDEC Staff.

CONCLUSION

Accordingly, because the changes sought to amend Certificate Condition 95(a)(i) are reasonable and necessary and will not result in any change in the location of the facility or involve any material increase in any environmental impact, the Navigation Channel Amendment Petition is approved and hereby adopted consistent with the discussion above.

Based upon a review of all the documents submitted, responses received, and revised filings made by the Certificate Holders, the Segment 19B EM&CP for the Project, as revised, is approved subject to the conditions below.

The Commission orders:

1. Champlain Hudson Power Express, Inc.'s and CHPE Properties, Inc.'s (Certificate Holders) Certificate of Environmental Compatibility and Public Need (Certificate) shall be amended to include the changes to Certificate Condition 95(a)(i) described in its Petition to Amend Certificate of Environmental Compatibility and Public Need filed on February 9, 2024, and as modified in this Order. The Department of State concurrence in the form of the 2024 Modification Letter removes the portion of Condition 1 to the June 2011 Conditional Concurrence pertaining to the 15-foot burial requirement and allows the cable to be buried to at least nine feet below the authorized channel depth at four locations (identified above), and a 15% field contingency allowance for a total length of 18,655 feet. Where such contingency is utilized, CHPE must notify the Department of Public Service within a week of such installation.

2. Certificate Holders shall follow all applicable terms and conditions of the original Certificate and subsequent amendments, unless superseded by this Order.

3. The Environmental Management and Construction Plan for the Hudson River Cable Installation submitted by Certificate Holders on April 8, 2024, and revised on May 31, 2024, is approved subject to the following conditions.

4. 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.

5. For municipalities outside of the City of New York, 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 or 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 affected 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.

6. If potentially impacted sensitive receptors are located within the City of New York, the Certificate Holders shall comply with Certificate Condition 31 of the Certificate Order for work hour and noise mitigation requirements.

7. This proceeding is continued.

By The Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary