

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 GRANTING AMENDMENT OF CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED SUBJECT TO CONDITIONS

(Issued and Effective April 18, 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 Con 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 (MW) of electricity into the New York City load pocket. It is anticipated that the electricity transmitted by the Project will be primarily hydroelectric power.

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).

As described more fully below, the Certificate Holders obtained several Commission-approved Certificate amendments related to certain Certificate conditions and route modifications. On March 31, 2023, the Certificate Holders filed a petition, pursuant to PSL §123(2), to further amend the Certificate (Catskill Reroute Amendment Petition). In the Catskill Reroute Amendment Petition, the Certificate Holders sought (1) authorization of a change to an approximately 0.8-mile segment of the Project route that was approved in the Town and Village of Catskill (Catskill Reroute); and (2) approval of revisions to Certificate Condition 162 related to notification to collocated infrastructure owners in situations where such owners cannot be identified or located, or where disputes arise with such owners, which require further efforts to resolve. On May 26, 2023, the Certificate Holders revised their Catskill Reroute Amendment Petition (Revised Catskill Reroute Amendment Petition) and withdrew the request to amend Certificate Condition 162. On March 22, 2024, the Certificate Holders filed final highway work permit amendments that the NYS Department of Transportation (NYSDOT) approved.

Through this Order, the Commission approves the requested Revised Catskill Reroute Amendment Petition authorizing the Catskill Reroute.

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 of 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 Commission granted the Amendment 2 Petition 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 (NYC) 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 Commission granted the Amendment 3 Petition 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 Commission granted the Amendment 4 Petition 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 High Voltage Alternating Current (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).³ The proposed changes included reconfiguration of the Astoria HVAC Connection from an underground to an overhead double-circuit 345 kV transmission line. The Commission granted the Amendment 5 Petition on February 17, 2022.

³ The Certificate Holders also sought approval to construct a new interconnection point and converter station in the Town of New Scotland but withdrew their request on November 5, 2021.

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, Restoration, and Research/Habitat Improvement Project Trust (Trust). The Commission granted the Amendment 6 Petition 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 Commission granted the Amendment 7 Petition on December 15, 2022.

On March 31, 2023, the Applicants filed the Catskill Reroute Amendment Petition seeking approval of the Catskill Reroute. The Applicants filed the Revised Catskill Reroute Amendment Petition on May 26, 2023. The Certificate Holders mailed hardcopies of the Revised Catskill Reroute Amendment Petition to parties as required by PSL §122(2) and pursuant to 16 NYCRR §85-2.10(c), and it was also served via email on active parties to this proceeding and on all potentially newly affected landowners and municipalities in conjunction with the filing of the Revised Catskill Reroute Amendment Petition.

The Revised Catskill Reroute Amendment Petition proposes changes to an approximately 0.8-mile segment of the Project route that was approved in the Town and Village of Catskill. This routing change would authorize the removal of portions of the Project from some local roadways, relocating away from residences and into NYSDOT lands along State Routes 23 and 9W and provide a more technologically constructable

installation of Project components beneath major railroad and highway infrastructure, as well as under the Catskill Creek.

On March 27, 2023, the Certificate Holders filed the HVDC-Terrestrial Catskill (Segment 11) Environmental Management and Construction Plan (EM&CP) (Segment 11 EM&CP), which covers construction and installation of the overland transmission cable in the Town and Village of Catskill, Greene County. The Segment 11 EM&CP included the Catskill Reroute.⁴ On August 18, 2023, The Commission approved, subject to conditions, the Segment 11 EM&CP. In doing so, the Commission specifically ordered,

The approval of the 0.8-mile portion of the excluded area discussed in the Order above, from Station 70058 + 50 to Station 70101 + 50, is conditional upon the approval of the Catskill Reroute Amendment Petition (filed March 31, 2023, and revised on May 26, 2023); therefore, no work may be conducted within the excluded area until the Catskill Reroute Amendment Petition is approved and a Notice to Proceed with construction of that 0.8-mile portion has been issued by the Chief of Environmental Certification and Compliance of the Office of Energy System Planning and Performance, or by a designee.⁵

On August 10, 2023, a "Notice of Procedural Conference" to be held on August 30, 2023, was issued. The notice stated that the primary purpose of the conference was to provide the parties an opportunity to present and explain any proposals regarding the procedures that should be followed with

⁴ This includes the 0.8-mile section (from Station 70058 + 50 to Station 70101 + 50) as shown on Sheets C105 through C107 of Appendix C of the Segment 11 EM&CP filing.

⁵ Case 10-T-0139, Order Approving Environmental Management and Construction Plan for Segment 11 Subject to Conditions (issued August 30, 2023) (Segment 11 EM&CP Order), p. 11.

respect to Catskill Reroute Amendment Petition. During the August 30, 2023 Procedural Conference, the Certificate Holders asserted the proposed amendment would reduce environmental impacts and would not result in a substantial change in Project location. DPS Staff agreed, and no other party put forth a position or raised additional concerns.⁶

On September 8, 2023, the Administrative Law Judge issued a "Ruling on Process" concluding that no further process was required. The ruling concluded that there is no factual dispute warranting an evidentiary hearing. Accordingly, the ruling referred the Amendment Petition to DPS Staff for processing.

On March 22, 2024, the Certificate Holders filed highway work permit amendments that NYSDOT approved related to the 0.8-mile Catskill Reroute within Revised Amendment Petition 8.⁷

Consistent with Revised Catskill Reroute Amendment Petition, 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, co-located infrastructure (CI) owners cannot be identified or are unresponsive. The Commission granted the Amendment 9 Petition on October 13, 2023.

On February 9, 2024, the Certificate Holders filed a petition for a tenth Amendment (Amendment Petition 10) seeking

⁶ Case 10-T-0139, Ruling on Process (issued September 8, 2023), p. 3.

⁷ It should be noted that the March 22, 2024 supplemental filing includes additional information related to routing modifications in other EM&CP segments. However, those items are not being considered in this Order.

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. Amendment Petition 10 remains pending before the Commission.

NOTICE AND PUBLIC COMMENTS

On June 28, 2023, in accordance with the Commission's Rules at 16 NYCRR §85-2.10(c),⁸ the Applicants provided Affidavits of Publication of the Notice of Application to Amend the Certificate issued by the Commission on April 18, 2013, relating to their Revised Catskill Reroute Amendment Petition. The Secretary issued a "Notice Soliciting Comments" on May 30, 2023, which requested public comments by June 16, 2023. On August 10, 2023, the Secretary issued a "Notice of Public Statement Hearing" indicating that a public statement hearing would be held on Amendment Petition 8. On August 29, 2023, a public statement hearing was held in the Catskill Town Hall.

After the Catskill Reroute Amendment Petition was filed, several groups and individuals submitted comments. The comments submitted that specifically address the proposed routing changes in the Amendment 8 Petition and comments received during the public statement hearing are addressed below.

⁸ Generally, the Commission's rules require that notice be published once a week for two consecutive weeks in a newspaper of general circulation in all the areas through which the facility would pass, both as primarily and alternatively proposed (see, 16 NYCRR §85-2.10).

NYS Department of Transportation

In its comments filed June 16, 2023, NYSDOT noted concerns with using an open cut methodology on NYSDOT right-of-way and the need for plans to be submitted to NYSDOT for review. NYSDOT further noted that, if the Certificate Holders presented plans to NYSDOT that utilized trenched/open cut methodologies, the disturbance from such installation would be fully remedied to avoid all of the noted adverse impacts.

The March 22, 2024 filing shows NYSDOT approval of the final highway work permit amendments.

Hampton Garage

Arnold A. Christensen, owner of Hampton Garage, submitted comments on April 3, 2023, regarding concerns about a nearby gas line and impacts to his driveway during construction.

Public Statement Hearing

Three individuals spoke at the public statement hearing. An attorney representing Greene County commented that the Certificate Holders had not yet negotiated the necessary easements to pass through properties within Greene County. A Village of Catskill trustee commented that the Certificate Holders had kept the Village of Catskill informed of the Project's route and changes thereto, and he specifically noted that he was glad the Certificate Holders had changed the route as proposed in Catskill Reroute Amendment Petition. A third speaker on behalf of the Hudson Seven Intermunicipal Drinking Water Council and supervisor of the Town of Esopus commented regarding tidal concerns related to drinking water.

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.”

Because the proposed route modifications to the certificated Project will not result in any material increase in environmental impacts and the proposed modifications to the previously certificated route of the Project will not result in a substantial change in the location of all or a portion of the Project, no hearing is required for the Catskill Reroute Amendment Petition.

DISCUSSION

The Certificate Holders seek approval of certain modifications to the certified Project layout as amended. The modifications include modifications to an approximately 0.8-mile segment of the Project route that was approved in the Town and Village of Catskill. Approval of the Catskill Reroute will further amend the Catskill Creek Alternative.⁹

⁹ Case 10-T-0139, Order Granting Amendment of Certificate of Environmental Compatibility and Public Need Subject to Conditions (issued August 13, 2020), p. 15.

The previously approved Catskill Creek Alternative involved a shift in Facility location from the CSX rail corridor within the Village of Catskill approximately 500 feet westerly to Allen Street, a local street with limited residential development; and across the Catskill Creek via HDD installation rather than attachment to the CSX elevated railway bridge, re-joining the certificated route along Route 9W and the CSX railway south of Catskill Creek.

The Catskill Reroute will begin near the intersection of State Route 23 and the CSXT right-of-way in the Town of Catskill before redirecting the line into State-owned land, then along Allen Street to the State Route 9W right-of-way. The Catskill Reroute then follows State Route 9W on NYSDOT land to a location north of the intersection of Main Street, Route 9W, and Maple Avenue in the Village of Catskill. A HDD will cross under the Catskill Creek, Old Main Street, Bushnell Avenue, and Main Street before emerging on private property near the intersection of Main Street and Maple Avenue. At that point, the line will reenter the Allowed Deviation Zone along the CSXT right-of-way.

The Catskill Reroute is reasonable and is not expected to result in any significant increase in adverse environmental impacts or a substantial change in location of this portion of the Project.

With this approval, consistent with the Segment 11 EM&CP Order, the Certificate Holders may commence construction activities within the Catskill Reroute once they receive a Notice to Proceed from the Chief of Environmental Certificate and Compliance of the Office of Energy System Planning and Performance, or by a designee.

With respect to any changes to an approved EM&CP associated with the NYSDOT's approval of the final highway work

permit amendments, those changes will be processed in accordance with Certificate Condition 158.

CONCLUSION

The Catskill Reroute is reasonable. It is not expected to result in any significant increase in adverse environmental impacts, has the support of the affected municipalities, and has received the appropriate NYSDOT highway work permit approvals. Accordingly, the amendments to the certificated route described in the Revised Catskill Reroute Amendment Petition are approved.

The Commission orders:

1. Champlain Hudson Power Express, Inc.'s and CHPE Properties, Inc.'s (Certificate Holders) Certificate of Environmental Compatibility and Public Need shall be amended to include the Catskill Reroute described in its Petition to Amend Certificate of Environmental Compatibility and Public Need, filed March 31, 2023, revised May 26, 2023, and supplemented March 22, 2024, and this Order.
2. Certificate Holders shall follow all applicable terms and conditions of the original Certificate and subsequent amendments, unless superseded by this Order.
3. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary