

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on October 12, 2023

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
Diane X. Burman
James S. Alesi
Tracey A. Edwards, recusing
John B. Howard, dissenting
David J. Valesky
John B. Maggiore

CASE 10-T-0139 - Application of Champlain Hudson Power Express,
Inc. for a Certificate of Environmental
Compatibility and Public Need Pursuant to
Article VII of the PSL for the Construction,
Operation and Maintenance of a High Voltage
Direct Current Circuit from the Canadian Border
to New York City.

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

(Issued and Effective October 13, 2023)

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 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, over the past three years, the Certificate Holders obtained seven Commission-approved Certificate amendments related to certain Certificate conditions and route modifications. On July 28, 2023, the Certificate Holders filed a petition, pursuant to Section 123(2) of the PSL, to amend Certificate Condition 162(i) to address instances where Co-located Infrastructure (CI)³ owners, who despite all commercially reasonable efforts, cannot be identified or are unresponsive (Unknown CI Amendment Petition).

Through this order, the Commission approves the requested Unknown CI Amendment Petition authorizing the changes to Certificate Condition 162(i).

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

³ Co-located Infrastructure is defined in Certificate Condition 27 as "electric, gas, telecommunication, water, wastewater, sewer, and steam infrastructure and appurtenant facilities and associated equipment, whether above ground, below ground, or submerged ... but do not include railways, highways, roads, streets, or avenues."

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 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).⁴ 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, Restoration, and Research/Habitat Improvement Project Trust. The Amendment 6 Petition was granted on March 16, 2022.

⁴ 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.

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 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 only is pending before the Commission.

On July 28, 2023, the Certificate Holders filed the Unknown CI Amendment Petition 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 Unknown CI Amendment Petition proposes to allow Certificate Holders to utilize previously approved standardized utility protection measures to protect unknown or unresponsive CI where crossed by the Facility upon a demonstration that such measures will avoid adverse impacts to that CI.

In their Unknown CI Amendment Petition, the Certificate Holders noted the public benefits of the Project, given the passage of State and New York City legislative

programs aimed at curbing greenhouse gases, including the Climate Leadership and Community Protection Act (CLCPA). According to the Certificate Holders, the addition of the proposed "language to Condition 162(i) furthers the Commission's overall objective of ensuring the protection of the State's utility infrastructure and the customers and/or ratepayers who may rely on that infrastructure, while still ensuring that the CHPE Facility can be constructed and delivered on schedule, which is necessary to assure the continued reliability of the New York State electric grid⁵ and achievement of state-mandated ... (CLCPA) targets."⁶

NOTICE AND PUBLIC COMMENTS

A "Notice Soliciting Comments" was issued on August 21, 2023, which requested public comments by September 11, 2023. Notice of the Unknown CI Amendment Petition was provided as required by PSL §122(2) and pursuant to the Commission's rules at 16 NYCRR §85-2.10(c). The Unknown CI Amendment Petition was also served via email on parties to this proceeding in conjunction with its filing of the Unknown CI Amendment Petition. On October 3, in accordance with the Commission's Rules at 16 NYCRR §85-2.10(c), the Certificate Holders provided Affidavits of Service and Affidavits of Publication of the Notice of the Petition to Amend the Certificate issued by the Commission on April 18, 2013, relating to their Unknown CI Amendment Petition.

After the Amendment 8 Petition was filed, but before the CI amendment that was initially requested in that petition was withdrawn by the Certificate Holders, the Town of Esopus,

⁵ Citing the NYISO 2022 Reliability Needs Assessment, p. 12.

⁶ CI Amendment Petition, p. 3.

the City of Poughkeepsie, Dutchess County, and the Hudson River Drinking Water Intermunicipal Council (Hudson 7)⁷ submitted comments indicating concerns regarding the definition of coverage for Co-located Infrastructure and associated consultation requirements, as well as general concerns related to Public Water Supply (PWS) Intakes located in the Hudson River. In their comments opposing the amendment, Dutchess County and the City of Poughkeepsie noted the proposed language would “disincentivize the Certificate Holders from making good faith efforts to consult with owners of CI,” and stated their particular opposition to the “unjustifiably short 10-day window that has been requested for a resolution before the Certificate Holder is able to petition the PSC to resolve disagreements.”

The Certificate Holders have conducted in-person meetings and exchanged correspondence with representatives of the Town of Esopus and the other members of the Hudson 7 to discuss their concerns. The Certificate Holders have indicated that the marine alignment was designed to avoid PWS intake structures⁸ and no PWS intake structures are impacted by this amendment.⁹ In addition, in correspondence filed on September 6, 2023, CHPE indicated that it has completed consultations with all Hudson 7 communities (including the Town of Esopus and the City of Poughkeepsie) to discuss and address concerns including water testing protocols and construction planning and emergency management, which will be included as part of the proposed

⁷ The Hudson 7 membership includes the Town of Esopus, the Town of Hyde Park, the Town of Lloyd, the Town and City of Poughkeepsie, and the Town and Village of Rhinebeck.

⁸ Unknown CI Amendment Petition, p. 6.

⁹ PWS intake structures are covered by Certificate Conditions 102 - 106 and 150.

activities in the Environmental Management and Construction Plans (EM&CPs) associated with the Hudson River in-water work. The Certificate Holders have further committed to continue to engage with PWS operators as CHPE develops those EM&CPs.

No additional comments have been received since the Unknown CI Amendment Petition was filed.

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 Unknown CI Amendment Petition related to Condition 162(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

The Certificate Holders seek approval of additions to Certificate Condition 162(i) to address situations where, despite its best efforts to obtain the CI approvals and agreements necessary to obtain authorization to construct and operate the Project, CHPE cannot identify the CI owner(s) or a CI owner is otherwise unresponsive. The Certificate Holders state that the amended language is needed because, as currently written, Condition 162(i) requires "documentation showing agreement" with CI owners and CHPE could never meet that obligation if a CI owner cannot be identified or is unresponsive.

Certificate Condition 162 currently provides conditions for the protection of CI and Condition 162(i) specifically requires:

- (i) documentation showing agreement by the owners and/or operators of affected CI with both Certificate Holders' construction schedule for operations in the vicinity of such CI and the measures described in the EM&CP documents

¹⁰ See, e.g., Case 08-T-0034, Hudson Transmission Partners, LLC, Order Granting Amendments to Certificate of Public Convenience and Necessity (issued November 3, 2011, confirmed November 17, 2011) and Order Approving Certificate Amendments and Directing Compliance (issued January 12, 2017, confirmed January 24, 2017); Case 02-T-0036, Neptune Regional Transmission System LLC, 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.").

relating to such CI or a description of those aspects of the proposal that are disputed, and a discussion of the positions taken by the Certificate Holders and the owners and/or operators of the CI.

The Certificate Holders have requested that Condition 162(i) be amended to include the following subsections (i) and (ii) and Department of Public Service (DPS) Staff recommends adoption of the conditions with its proposed edits (signified by strikeouts and underlined text) to ensure that notices and agreements are promptly provided to Staff and filed with the Secretary:

- i. If, despite all commercially reasonable efforts, (a) Certificate Holders cannot identify the owners and/or operators of affected CI, or in the event such owners and/or operators of affected CI are unresponsive and, (b) due to the fact that the CI owner is unknown or unresponsive, Certificate Holders cannot provide the agreement required under Certificate Condition 162(i), then Certificate Holders shall ~~provide~~ file with the Secretary, at least ten (10) days prior to requesting a Notice to Proceed with construction of any such crossing, a narrative describing efforts made in attempting to contact such unknown or unresponsive CI owners and/or operators ("Unknown or Unresponsive CI Owner Crossings"). Certificate Holders shall also provide an attestation indicating that such crossings have been designed by a Professional Engineer, along with copies of proposed standard pre- and post-installation utility protection measures to be implemented in connection with the Unknown or Unresponsive CI Owner Crossing. The standard utility protection measures to be implemented by Certificate Holders shall be substantially similar to those used for other utilities of the same utility type (telecommunications, gas, electric, etc.) in

a materially similar environment (marine, rural or urban terrestrial setting, etc.). Provided that Certificate Holders can demonstrate that they have exhausted all commercially reasonable efforts to identify and/or engage Unknown or Unresponsive CI Owners, the Department may issue a Notice to Proceed authorizing Certificate Holders to proceed with standard utility protection measures at Unknown or Unresponsive CI Owner Crossings.

- ii.* In the event that, subsequent to a submittal under subsection (i) above, a previously Unknown or Unresponsive CI Owner is identified or comes forward at least five (5) business days prior to the installation of approved standard utility protection measures, Certificate Holders shall ~~notify~~ provide such notice to the Secretary and DPS Staff and suspend work to install such standard utility protection measures at that crossing pending further discussions with the CI Owner consistent with this Condition. In all other cases, if a previously Unknown or Unresponsive CI Owner is identified or comes forward after the expiration of that 5-day period through the commencement of Facility operations, Certificate Holders shall notify staff within 24 hours and consult with that CI Owner to obtain an agreement regarding the sufficiency of utility protection measures installed at the crossing in question. Any such agreement shall be filed with the Secretary. This Condition shall not be construed to require suspension of submarine cable installation activities once commenced.

Because the Certificate Holders would be unable to comply with Condition 162(i) in the event that they cannot identify CI owners or such CI owners are unresponsive, the amended language is needed to provide procedures for CHPE to be able to continue with construction of this Facility upon a showing that commercially reasonable efforts were made to ascertain the CI owner and that the CHPE Facility will not

adversely impact the continued operation of the identified CI as required by Condition 162(a)-(j). Further, the requirement to install standard utility protection measures to protect utilities where the CI owners are unknown or unresponsive should sufficiently achieve the protection of the CI even in the absence of a CI owner willing or able to proffer the agreements required under Condition 162(i). DPS Staff's proposed language to include requirements to provide timely notice to Staff and the Secretary is reasonable and shall be adopted.

CONCLUSION

Accordingly, because the changes sought to amend Certificate Condition 162(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 Unknown CI Amendment Petition is approved and the changes to Certificate Condition 162(i) to include subsections (i) and (ii) with the edits proposed by DPS Staff, as set forth above, are hereby adopted.

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 162(i) described in its Petition to Amend Certificate of Environmental Compatibility and Public Need filed on July 28, 2023, and as modified in 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