

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on March 19, 2020

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Diane X. Burman
James S. Alesi
Tracey A. Edwards
John B. Howard

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, IN PART, AMENDMENT OF CERTIFICATE OF
ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED
SUBJECT TO CONDITIONS

(Issued and Effective March 20, 2020)

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 Applicants), 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 converter station in Astoria, Queens (the Project) pursuant to Public Service Law (PSL)

Article VII.¹ 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 fluids) HVDC 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 1,000 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.

In a petition filed September 30, 2019, pursuant to Section 123(2) of the PSL, the Applicants request that the Certificate and certain Project Construction filings be amended to authorize certain changes. In sum, the Applicants request that the Certificate be amended to authorize certain changes related to (1) updating previous filings regarding Project construction, (2) avoiding delay in Project construction (Certificate Condition 11), and (3) ensuring efficient processing of construction and post-construction filing requirements (Certificate Conditions 95(a)(i), 140, and 156(b)).

Through this order, the Commission approves the requested amendments to the Certificate Conditions 95(a)(i), 140, and 156(b), and the Project Construction filings. The Commission does not at this time render a determination on the requested amendment to Certificate Condition 11 - federal and Canadian permits.

¹ 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, Order Granting Certificate of Environmental Compatibility and Public Need (issued April 18, 2013).

BACKGROUND

On September 30, 2019, the Applicants submitted an application for amendment of the Certificate (Amendment Application 1). Hardcopies of Amendment Application 1 were mailed to parties as required by PSL §122(2) and pursuant to 16 NYCRR §85-2.10(c). The Amendment Application 1 was also served via email on active parties to this proceeding. The Applicants, however, initially requested a waiver of newspaper notice requirements under 16 NYCRR §85-2.10(c).² That waiver request was subsequently withdrawn by the Applicants on October 15, 2019. On November 14, 2019, in accordance with the Commission's Rules, the Applicants provided nine Affidavits of Publication of the Notice of Application to Amend the Certificate of Environmental Compatibility and Public Need issued by the Commission on April 18, 2013, relating to their Amendment Application 1. These publications, according to the Applicants, covered the entire Project area ranging from New York City to the Canadian border.

Thereafter, on December 6, 2019, the Applicants filed a second amendment to the Certificate (Amendment Application 2) seeking approval of certain preferred alternatives to the certified Project layout. The Amendment Application 2 proposes changes to the existing Project layout to reflect preferred alternative locations including: (1) relocating the route centerline in the Towns of Putnam and Dresden from the narrows of Lake Champlain to road right-of-way (ROW); (2) relocating the route centerline in the Towns of Fort Ann and Whitehall a short

² 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).

distance from the railroad ROW to road ROW; (3) relocating the route centerline in the Village of Scotia and the Towns of Rotterdam and Glenville to avoid downtown Schenectady; (4) relocating the route centerline in the Town of Bethlehem outside of the Selkirk railyards to road ROW, railroad ROW, and certain other connecting properties; (5) relocating the Catskill Creek crossing in the Town and Village of Catskill; (6) relocating the route centerline in the Towns of Clarkstown, Haverstraw, Stony Point and the Villages of West Haverstraw, and Haverstraw from railway ROW to road ROW and certain other connecting properties; (7) relocating the Astoria-Rainey cable under the streets in Queens, New York City, and (8) relocating the converter station site within the Astoria Generating complex in Queens, New York City. According to the Applicants, the preferred alternatives combined represent an approximately 5.8 linear mile increase in the overall Project's length.³

The Amendment Application 2 is not the subject of this Order and none of the requested route changes are being considered herein. The Amendment Application 2 is on a separate procedural track and is currently assigned to an Administrative Law Judge for further process.

On December 17, 2019, the Commission issued a Notice Soliciting Comments [on Amendment Application 1 only] and Requiring Additional Service (Notice). Only one comment germane to the Amendment Application 1 was received. Ian Corcoran, representing the Hudson River Safety, Navigation & Operations Steering Committee, submitted comments regarding the depth of in-water burial on November 22, 2019. They requested to be

³ A further supplement to Amendment Application 2 was filed on December 20, 2019. The full text of the Amendment Application 1 and 2 petitions and any supplements may be reviewed online at the Department of Public Service web page: www.dps.ny.gov.

consulted on final burial depth and location. While the letter specifies the Hudson River, they are likely to be interested in the Harlem River navigation considerations as well. The letter comment also represents the interest of Eric Johansson who is the Director of the Towboat and Harbor Carriers Association, who, we note, is a party to the Certificate proceeding.

Specifically, the Notice requested comments on the following changes.

Project Documentation Filings

According to the Applicants' review of Project Documentation, one of the "typical" installation detail design drawings appearing in the Project Documentation should be modified to reflect the Applicants' intent in being authorized to install the HVDC cables within a conduit along overland portions of the Project. This particular change, according to the Applicants, is described in an addendum to Section 7 of the Project's Best Management Practices.

Currently, the Applicants state that the Project Documentation contemplates direct burial of the cables in an open trench as the only method for installation. The Applicants submit that this modification will reduce the length of open trench on the Project, reduce the duration of communities impacted by the Project, and provide flexibility in scheduling differing construction trades.

Certificate Condition 11

The Applicants seek modification of Certificate Condition 11 to, according to the Applicants, allow construction of the Project prior to meeting certain existing preconditions:(i) the filing by TransÉnergie (or its successor) with the Government of Quebec under the Environmental Quality Act and with the Canadian Energy Regulator under the Canadian Energy Regulator Act of applications for those approvals and

permits necessary in order to allow for the construction of transmission facilities interconnecting with the bulk power system operated by TransÉnergie and extending to the New York border; (ii) the issuance by the United States Department of Energy of an approval pursuant to Executive Orders 10485 and 12038; and (iii) the issuance by the United States Army Corps (USACE) of permits pursuant to section 404 of the Federal Clean Water Act and section 10 of the Federal Rivers and Harbors Act.

According to the Applicants, this modification is warranted because they have already complied with Certificate Condition 11 by obtaining two governmental authorizations within their control: the Presidential Permit was issued on October 6, 2014 and the USACE Permit was issued on April 20, 2015. The Applicants state that in order to meet certain deadlines, the Project's 42-month construction program must begin approximately 15-18 months in advance of the latest date upon which Hydro Quebec now predicts that it will receive permits in Canada.

The proposed modified Certificate Condition 11 would read as follows:

The Certificate Holders shall not commence construction of the Facility prior to (i) the filing by TransÉnergie (or a successor to such organization) with the Government of Quebec under the Environmental Quality Act and with the Canadian Energy Regulator under the Canadian Energy Regulator Act of applications for those approvals and permits necessary in order to allow for the construction of transmission facilities interconnecting with the bulk power system operated by TransÉnergie and extending to the New York border, (ii) the issuance by the United States Department of Energy of an approval pursuant to Executive Orders 10485 and 12038, and (iii) the issuance by the United States Army Corps ("USACE") of permits pursuant to section 404 of the Federal Clean Water Act and section 10 of the Federal Rivers and Harbors Act. The

Certificate Holders shall provide copies of said permits or applications to the Secretary within fifteen (15) days of receipt.

Certificate Condition 140

The Applicants seek modification of Certificate Condition 140 to allow for deviations within specified corridors where topographical, environmental, proximity (to nearby infrastructure), or other constraints exist. According to the Applicants, the specified corridor widths contained in Certificate Condition 140 may not be achievable in certain limited areas and in other Certificate conditions where precise numeric requirements are imposed, a "safety valve" was typically introduced to confirm that departure from the numeric requirement, if justified and approved by the Department of Public Service as part of the Environmental Management and Construction Practices (EM&CP) review process, may be allowable (e.g., Certificate Conditions 66(a), 95(b)(ii), 106(e), 150, and 156(a)). Applicants request that Certificate Condition 140 should include similar language allowing deviations in certain necessary circumstances.

The proposed modified Certificate Condition 140 would read as follows:

Except as may be detailed, justified, and approved by the Department of Public Service pursuant to the EM&CP process, each edge of the permanent overland Facility ROW shall be no closer than (a) when located entirely within lands owned or controlled by a railroad company or a public highway, six (6) feet to the outer surface of the nearest installed cable and (b), in all other areas, eight (8) feet to the outer surface of the nearest installed cable.

Certificate Condition 156(b)

The Applicants request a modification of Certificate Condition 156(b) to group for purposes of the shallows exclusion, the Harlem River with the East River, rather than with Lake Champlain and the Hudson River as currently required under the existing language. According to the Applicants, the Harlem River is unique among the water bodies affected by the Project because it is bank-to-bank, a maintained Federal Navigation Channel (MFNC).

For Lake Champlain and the Hudson, Harlem, and East Rivers, Certificate Condition 156(b) excludes shallow areas from the in-water Allowed Deviation Zone.⁴ Applicants state that in Lake Champlain and the Hudson River, the shallows exclusion by its terms precludes cable installation in areas in which the depth of water is less than 20 feet at mean low water/Mean Low Tide (MLT). In the East River, the shallows exclusion by its terms precludes cable installation in areas in which the depth of water is less than 10 feet at MLT. Applicants assert that while the Harlem River, which as noted above is itself an MFNC, was originally grouped with the Hudson River in terms of the depth requirements, its topography and its contributions to biodiversity are far more similar to those presented by the East River, and both the Harlem River and the Hell Gate section of the East River are currently listed as impaired due to contaminated soils. Nevertheless, Applicants state that in the final drafting of Certificate Condition 156(b), the Harlem River was assigned a depth of water installation constraint identical

⁴ Pursuant to Certificate Condition 156, an approvable EM&CP filing must show that cable installation will take place within a "Allowed Deviation Zone," unless certain limited circumstances relating to environmental impacts and engineering constraints are presented.

to that applicable in Lake Champlain and the Hudson River, even though the Harlem River has much more in common with the East River than it does with those waterbodies. Therefore, Applicants submit that in order to ensure that acceptable EM&CP filings can be prepared for the Project route in the Harlem River, Certificate Condition 156(b) must be revised in order to achieve the proper grouping in terms of the shallows exclusions.

The proposed modified Certificate Condition 156(b) would read as follows:

For the HVDC Transmission System installed in Lake Champlain and the Hudson and Harlem Rivers, the Allowed Deviation Zone shall be anywhere within those bodies of water where the water depth exceeds twenty (20) feet at mean low water, and where installed in the Harlem and East Rivers the Allowed Deviation Zone for the HVDC Transmission System shall be anywhere where the water depth exceeds ten (10) feet at mean low water...

Certificate Condition 95(a)(i)

Applicants request modification of Certificate Condition 95(a)(i) to ensure the essential and beneficial consistency between state and federal requirements for cable installation within the limits of the maintained Federal Navigation Channels as specified by the USACE. According to the Applicants, the adoption of the Harlem River installation constraint in Certificate Condition 95(a) resulted from the Applicants not yet having resolved the terms of the Corps Permit at the time the Joint Proposal was finalized in 2012. However, Applicants state that in late 2013 and early 2014, the Applicants, the USACE, and the New York State Department of State (NYS DOS) performed a review of the Harlem River and on March 3, 2014, NYSDOS amended its June 8, 2011 Coastal Zone Management Act Consistency Concurrence Determination to facilitate the USACE's establishment of an appropriate design

regime for the portion of the Project located in the Harlem River. Based on the Amended Determination, the USACE issued its Permit on April 20, 2015. Thus, according to the Applicants, the 15-foot "placeholder" in Certificate Condition 95(a)(i) should be revised to ensure the consistency between State and federal requirements.

The proposed modified Certificate Condition 95(a)(i) would read as follows:

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 depth of at least fifteen (15) 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.

The Applicants submit that in light of the minor nature of the proposed changes being requested to the Certificate Conditions discussed above, no hearing should be required.

Finally, and subsequent to filing the September 30, 2019 petition (Amendment Application 1), on December 6, 2019, the Applicants filed their second petition to amend the Certificate to propose certain route changes (Amendment Application 2). The Commission determined that because Amendment Application 2 proposed route changes that involve municipalities and persons that were not parties to the original Certificate proceeding, the Applicants shall serve those additional entities who may also have an interest in Amendment

Application 1 within three calendar days of the issuance of the Notice and shall file proof of service to those affected entities with the Secretary to the Commission. On December 31, 2019, the Applicants advised that they had served their petition on all affected landowners and municipalities in accordance with the Commission's Notice.

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 Amendment Application 1 does not propose any change in the location of the facility or involve any material increase in any environmental impact, as discussed below, no hearing is required.⁵

⁵ 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); 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 Approving Certificate

(continued...)

DISCUSSION

The Applicants request five non-route Project Documentation filing or Certificate amendments. According to the Applicants, these amendments will, in general, enhance the Project's prospects for success. At the same time, the Applicants state that these amendments are necessary to update previous filings related to Project construction, avoid delay in Project construction and ensure efficient processing of construction and post-construction filing requirements.

Through this Order, the Commission grants the Project Documentation filing and Certificate amendments relating to Certificate Condition 140, Certificate Condition 156(b), and Certificate Condition 95((a)(i)). The Commission does not at this time render a determination on the requested amendment to Certificate Condition 11.

Project Documentation Filings

The Applicants' request to amend the Project Documentation filings is reasonable. As noted, the change results in a number of benefits including the potential to reduce the length of open trench required during construction and the duration of community impacts associated with the

Amendments and Directing Compliance (issued January 12, 2017); 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 - Petition to Amend Opinion and Order Issued January 23, 2004 filed by Neptune Regional Transmission System LLC, Order Granting Amendment of Certificate of Environmental Compatibility and Public Need (issued August 26, 2005), at 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.")

construction of the Project, in addition, to providing flexibility in Project construction scheduling. The Applicant further advises that the width and depths of the trenches will remain unchanged, as will the size and frequency of the splice vaults, from those associated with the direct burial technique. Thermal impacts to surrounding soils will also be slightly reduced by virtue of the insulating effect of the conduits.

Based on the potential to reduce both environmental impacts and impacts to communities compared to what was originally contemplated provides support for the approval supplementing the Project Documentation filing to reflect the Applicants' interest in installing the cables within a conduit along overland portions of the Project.

Certificate Condition 11

The Applicants seek modification of Certificate Condition 11 to allow construction of the Project prior to meeting certain existing Certificate preconditions like the filing by TransÉnergie (or its successor) with the Government of Quebec under the Environmental Quality Act and with the Canadian Energy Regulator under the Canadian Energy Regulator Act of applications for those approvals and permits necessary in order to allow for the construction of transmission facilities interconnecting with the bulk power system operated by TransÉnergie and extending to the New York border; (ii) the issuance by the United States Department of Energy of an approval pursuant to Executive Orders 10485 and 12038; and (iii) the issuance by the USACE of permits pursuant to section 404 of the Federal Clean Water Act and section 10 of the Federal Rivers and Harbors Act. According to the Applicants, this Certificate modification is warranted to meet certain Project deadlines.

At this time the Commission does not have sufficient information to render a determination on this amendment request.

Department of Public Service Staff advises that it has requested additional information from the Applicants on those Canadian and Federal approvals and the Commission will render a determination on that aspect of the Applicants' amendment request at a later date.

Certificate Condition 140

Specified corridor widths contained in Certificate Condition 140 may not be achievable in certain limited areas where topographical, environmental, proximity (to nearby infrastructure), or other constraints exist. As the Applicants point out, in other Certificate Conditions where precise numeric requirements are imposed, a "safety valve" was provided to allow for departure from the numeric requirement, if justified and approved by the Department of Public Service as part of the EM&CP review process (see, e.g., Certificate Conditions 66(a), 95(b)(ii), 106(e), 150, and 156(a)).

The Commission agrees that Certificate Condition 140 should be revised to include similar language allowing deviations under certain circumstances.

Certificate Condition 156(b)

Certificate Condition 156(b), as written, assigned a depth of water installation constraint for the Harlem River identical to that applicable in Lake Champlain and the Hudson River, even though it appears the Harlem River has much more in common with the East River than it does with those waterbodies. According to the Applicants, in meetings attended by them in 2014, the USACE confirmed that the authorized depth of the Harlem River is only 15 feet below MLT (except for a 400 foot stretch in the Marble Hill area where the authorized depth is 18 feet below MLT and the bottom is a rock shelf consisting of Manhattan gneiss) and that much of the Harlem River is less than 20 feet deep at MLT. Thus, pursuant to Certificate Condition

156(b), as written, there is no available Allowed Deviation Zone in several stretches of the Harlem River, and installation of the Project cables in this waterbody could be precluded.

Therefore, in order to ensure that acceptable EM&CP filings can be prepared for the Project route in the Harlem River, the Commission agrees that Certificate Condition 156(b) should be revised in order to achieve the proper grouping in terms of the shallows exclusions.

Certificate Condition 95(a)(i)

Certificate Condition 95(a), as written, would require the cables to be installed at 30 foot below MLT (15 feet authorized depth plus 15 feet below authorized depth = 30 feet) in most areas of the Harlem River and 33 feet below MLT (18 feet authorized depth plus 15 feet below authorized depth = 33 feet) at the rock shelf near Marble Hill.

The Applicants state that adoption of the Harlem River installation constraint as written in Certificate Condition 95(a) resulted from the Applicants not yet having resolved the terms of the USACE Permit at the time the Joint Proposal was finalized in 2012. In fact, the USACE Permit was not issued until three years later. In 2012, the then-available guidance provided by the USACE stated that requiring the cables to be installed at no less than fifteen feet below the authorized depth of an MFNC would ensure "minimal impact to navigation and future dredging." In developing the Joint Proposal, the Applicants needed an MFNC "placeholder" pending final review and permitting by the USACE.

In late 2013 and early 2014, the Applicants, the USACE, and the NYSDOS performed a review of the Harlem River. On March 3, 2014, NYSDOS amended its June 8, 2011 Coastal Zone Management Act Consistency Concurrence Determination to facilitate the USACE's establishment of an appropriate design

regime for the portion of the Project located in the Harlem River. The key section of the Amended Determination, states as follows: "[t]he proposed modification involves modifying burial depths of the proposed cable within federal navigation channels from 15 feet below authorized depth to: 8 feet in soft sediments and 6 feet in rock below the authorized depth in the Harlem River...."

Accordingly, the Commission approves the requested amendment to ensure consistency between State and federal requirements.

CONCLUSION

The modifications to the Project Documentation filings, Certificate Condition 140, Certificate Conditions 156(b) and Certificate Condition 95(a)(i) are reasonable because they either seek to reduce environmental impacts or seek to ensure consistency between State and federal review. Accordingly, the amendments to the Project Documentation filings and Certificate Conditions 140, 156(b), and 95(a)(i) are approved. No determination has been rendered on the request to amend Certificate Condition 11 at this time.

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 modified by amending the language in Certificate Condition 140 to read as follows:

Except as may be detailed, justified, and approved by the Department of Public Service pursuant to the EM&CP process, each edge of the permanent overland Facility ROW shall be no closer than (a) when located entirely within lands owned

or controlled by a railroad company or a public highway, six (6) feet to the outer surface of the nearest installed cable and (b), in all other areas, eight (8) feet to the outer surface of the nearest installed cable.

2. Certificate Holders' Certificate of Environmental Compatibility and Public Need shall be modified by amending the language in Certificate Condition 95(a)(i) to read as follows:

For the HVDC Transmission System installed in Lake Champlain and the Hudson and Harlem Rivers, the Allowed Deviation Zone shall be anywhere within those bodies of water where the water depth exceeds twenty (20) feet at mean low water, and where installed in the Harlem and East Rivers the Allowed Deviation Zone for the HVDC Transmission System shall be anywhere where the water depth exceeds ten (10) feet at mean low water...

3. Certificate Holders' Certificate of Environmental Compatibility and Public Need shall be modified by amending the language in Certificate Condition 156(b) to read as follows:

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 depth of at least fifteen (15) 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.

4. Certificate Holders' request to amend the Project Documentation filings is approved consistent with the discussion in the body of this Order.

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

6. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary