

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on September 17, 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 AMENDMENT OF CERTIFICATE OF ENVIRONMENTAL  
COMPATIBILITY AND PUBLIC NEED SUBJECT TO CONDITIONS

(Issued and Effective September 21, 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 Certificate Holders), authorizing, subject to conditions, the construction of a High Voltage, Direct Current (HVDC) transmission line extending approximately 333 miles from the New York/Canada border to a converter station in Astoria, Queens (the Project) pursuant to Public Service Law (PSL)

Article VII.<sup>1</sup> The HVDC transmission line will be buried within waterways and in upland areas along existing highway, street or railroad rights-of-way (ROW). 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 Certificate Holders requested that the Certificate and certain Project construction filings be amended to authorize certain changes. In sum, the Certificate Holders requested 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)) (collectively, the Amendment 1 Petition). The Commission granted, in part, the Amendment 1 Petition on March 20, 2020.<sup>2</sup> The Commission did not consider the requested

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<sup>1</sup> 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).

<sup>2</sup> Case 10-T-0139, Order Granting, in Part, Amendment of Certificate of Environmental Compatibility and Public Need Subject to Conditions (issued March 20, 2020) (the Amendment 1 Order).

changes to Certificate Condition 11 regarding federal and state permits at that time, which is the subject of the instant Order.

On May 14, 2020, CHPEI submitted a HydroQuebec (HQ) Memorandum that describes a review of the Canadian Regulatory and licensing procedures for major electric transmission lines. On September 10, 2020, CHPEI submitted a letter supplement to the Amendment 1 Petition (the September 10th Letter) and provided, in Attachments 1 and 2, a proposed schedule to outline specific construction activities at locations along the NYS-certificated facility route, keyed to milestones or "gating events" involving progress by HQ in Canadian and provincial licensing of the "Canadian Link" by HydroQuebec TransÉnergie (HQT). Additionally, Attachment 3 of the September 10th Letter provides proposed language for an amended Certificate Condition 11 to advance the Project in accordance with meeting the schedule of certain "gating events." The September 10th Letter also provides information in response to the Amendment 1 Order, wherein the Commission stated that it would address the Certificate Holders' request at a later date pending receipt of additional information requested by Department of Public Service Staff (Staff) with respect to Canadian and Federal approvals.

Through this Order, the Commission grants the Certificate amendment to Certificate Condition 11 pursuant to PSL §122(4), as described in more detail below.

#### BACKGROUND

On September 30, 2019, the Certificate Holders submitted 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 Certificate Holders, however, initially

requested a waiver of newspaper notice requirements under 16 NYCRR §85-2.10(c).<sup>3</sup> That waiver request was subsequently withdrawn by the Certificate Holders on October 15, 2019. On November 14, 2019, in accordance with the Commission's Rules, the Certificate Holders 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 Certificate Holders, covered the entire Project area ranging from New York City to the Canadian border.

Thereafter, on December 6, 2019, the Certificate Holders filed a second application for an amendment to the Certificate (Amendment Application 2) seeking approval of certain preferred alternatives to the certified Project layout in eight locations: (1) relocating the route centerline in the Towns of Putnam and Dresden, Washington Co., from the narrows of Lake Champlain to road ROW; (2) relocating the route centerline in the Towns of Fort Ann and Whitehall, Washington County, a short 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 in Schenectady County, to avoid downtown Schenectady; (4) relocating the route centerline in the Town of Bethlehem, Albany County, 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, Greene County; (6) relocating the route

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<sup>3</sup> 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).

centerline in the Towns of Clarkstown, Haverstraw, Stony Point and the Villages of West Haverstraw, and Haverstraw, Rockland County 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 Certificate Holders, the preferred alternatives combined represent an approximately 5.8 linear mile increase in the overall Project's length.<sup>4</sup>

On December 17, 2019, the Commission issued a Notice Soliciting Comments on Amendment Application 1 and Requiring Additional Service (Notice). Only one comment relating to the Amendment Application 1 was received. That comment addressed depth of in-water burial and potential effects on safe navigation. No comments regarding the matter of federal or state permitting - the subject of Certificate Condition 11 - have been received, although some comments address potential effects of Canadian hydroelectric power production and question the need for this Project generally. The Amendment Application 2 was granted by the Commission by Order issued August 13, 2020.<sup>5</sup>

#### Certificate Condition 11

The Certificate Holders seek modification of Certificate Condition 11 to, according to the Certificate Holders, allow construction of the Project prior to meeting certain existing preconditions: (i) the filing by TransÉnergie

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<sup>4</sup> A further supplement to Amendment Application 2 was filed on December 20, 2019.

<sup>5</sup> Case 10-T-0139, Order Granting Amendment of Certificate of Environmental Compatibility and Public Need Subject to Conditions (issued August 13, 2020).

(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 Certificate Holders, 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 Certificate Holders 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 anticipates that it will receive permits in Canada.

The September 10th Letter proposed that modified Certificate Condition 11 should read as follows:

The Certificate Holders shall not place transmission cable in any waterway, trench, conduits, or other location intended for permanent installation prior to the issuance of (i) by appropriate Canadian federal and/or provincial authorities of those approvals and permits necessary in order to allow for the construction of transmission facilities interconnecting with the bulk power system operated by TransÉnergie (or a

successor to such organization) and extending to the New York border; (ii) by the USDOE of an approval pursuant to Executive Orders 10485 and 12038 (the "Presidential Permit"); and (iii) 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 (the "Corps Permit"). The Certificate Holders shall provide copies of said permits to the Secretary within fifteen (15) days of receipt. In no event shall a delay or failure to obtain any of the above-referenced approvals serve as an occasion or justification for a deferral or alteration of any and all required site clean-up and restoration activities as set forth in the applicable EM&CP and relevant sections of this Certificate and the BMPs, including, without limitation, section 11 of the BMPs.

The Applicant agrees to include in periodic reports to the Commission the status of efforts to achieve certification in Canada. In the event that Hydro Quebec TransÉnergie is unable to achieve certification in Canada, the Applicant agrees to stop work in New York State and to restore any sites not previously restored, as set forth in the applicable Environmental Management and Construction Plan (EM&CP) and relevant sections of this Certificate and the Best Management Plans (BMPs), including, without limitation, section 11 of the BMPs.

#### 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 for Condition 11 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.<sup>6</sup>

#### DISCUSSION AND CONCLUSION

The Certificate Holders request amendment of the requirements of Certificate Condition 11 to enable the start of construction of portions of the certified Project prior to

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<sup>6</sup> 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 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.")

receipt of final permits by the provincial Government of Quebec, Canada, and the Canadian Energy Regulator. In its September 10th Letter, the Certificate Holders have provided a schedule of construction activities that they propose be allowed to proceed, subject to other provisions of the Certificate, as certain milestones or "gating events" are achieved, such as submittal of environmental reports.

Staff advises that the proposed construction activities included in this proposal are predominantly in upland locations involving excavation and installation of conduits along or within existing ROWs for streets, highways, and railroads. Only limited work is proposed in waterways: installation of a conduit for the cable landfall location at Lake Champlain shoreline at Putnam Station; and, potentially, a pre-lay grapnel run to accommodate future installation of the in-water cable within Lake Champlain. Installation of the transmission cable itself would not occur until final permitting by Canadian regulatory agencies is obtained. According to the Certificate Holders, this amendment will enhance the Project's prospects for success. At the same time, the Certificate Holders state that this amendment is 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 requested amendment to Certificate Condition 11, with conditions.

#### Certificate Condition 11

The Certificate Holders seek modification of Certificate Condition 11 to allow construction of the Project prior to meeting certain existing Certificate preconditions

including 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 (DOE) 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 Certificate Holders, this Certificate modification is warranted to meet certain Project deadlines.

The Commission notes that compliance with Conditions 11(ii) and (iii) has already been achieved: the US DOE has granted the Presidential Permit for construction interconnecting to Canadian utility system; and the USACE has granted permits pursuant to Clean Water Act Section 404, and section 10 of the Federal Rivers and Harbors Act. The subject of receipt of necessary Canadian or provincial permits to construct remains to be considered.

The Certificate Holders propose that certain Project construction activities can advance only if "Gating Events" occur related to: (1) Commission approval of the EM&CP filings and (2) conclusion of the Canadian regulatory process associated with the HVDC line in Quebec by HQT, only after which actual cable installation can occur within the facilities in New York State. The Gating Events include:

- Gating Event #1: ~Q2, 2021 - Q2, 2023: Commission approves Environmental Management & Construction Plan

for associated construction activities, which allows construction to start on those segments.

- Gating Event #2: ~Q2, 2023: The Province of Quebec issues a permit to authorize the construction of the Canadian Link and cable installation can commence.

The Certificate Holders explain that their proposal would bifurcate construction authorizations in Certificate Condition 11 into three time periods, as follows: (1) Q1, 2021 through Q4, 2021; (2) Q1 2022 through Q2, 2023; and (3) Q2, 2023 and later. As characterized by the Certificate Holders, "Less-invasive" construction and installation activities would occur between Q2, 2021 through Q2 2023, and all cable-installations, including in-water and upland locations, would occur only after Q2, 2023.

This revised proposal provides substantially additional specificity and generally addresses the considerations of limiting the earliest stages of construction work to predominantly occur only in previously disturbed locations including locations in or adjoining existing roads, highways and railroad ROWs, and avoiding installation of conductors including within in-water locations of the NYS-certificated facilities, prior to receipt of Canadian and provincial permits and authorization for associated upstream transmission facilities. The modifications to the limitations imposed by Certificate Condition 11 will not result in any change or increase in environmental effects. Other conditions and requirements of the Certificate, requirements for resource protection and management of construction activities implemented by the other Certificate Conditions and the site-specific EM&CP to be developed, reviewed and approved by the Commission, all remain applicable. While the original Certificate Condition 11

would avoid any impacts prior to having certainty that construction of the interconnection to the Canadian grid would be allowed to proceed, the identified benefits to consumers, utilities and the safe and reliable electric system in New York remain, and are potentially greater than anticipated when the Project was originally certificated, particularly considering the identified goals of the State Energy Plan, climate change projections, adoption of the Climate Leadership and Community Protection Act and the mandates for shifting to a renewable-based electric grid.

The amendment of Certificate Condition 11 is hereby adopted subject to the conditions of this Order.

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 11 to read as follows:

11.(a) The Certificate Holders shall not place transmission cable in any waterway, trench, conduits, or other location intended for permanent installation prior to the issuance of (i) by appropriate Canadian federal and/or provincial authorities of those approvals and permits necessary in order to allow for the construction of transmission facilities interconnecting with the bulk power system operated by TransÉnergie (or a successor to such organization) and extending to the New York border; (ii) by the United States Department of Energy of an approval pursuant to Executive Orders 10485 and 12038 (the "Presidential Permit"); and (iii) by the United States Army Corps of

Engineers of permits pursuant to section 404 of the Federal Clean Water Act and section 10 of the Federal Rivers and Harbors Act (the "Corps Permit"). The Certificate Holders shall provide copies of said permits to the Secretary within fifteen (15) days of receipt. In no event shall a delay or failure to obtain any of the above-referenced approvals serve as an occasion or justification for a deferral or alteration of any and all required site clean-up and restoration activities as set forth in the applicable Environmental Management and Construction Plan and relevant sections of this Certificate and the Best Management Practices (BMPs), including, without limitation, section 11 of the BMPs.

11.(b) Work shall advance generally in accordance with the schedule of gating events as described in Appendix 1;

11.(c) The Certificate Holders shall provide reports to the Commission regarding the status of efforts to achieve certifications and approvals of upstream facilities in Canada every six months from the date of this Order until the certifications and approvals are obtained. In the event that Hydro Quebec-TransÉnergie is unable to achieve certification in Canada, the Certificate Holders shall (i) notify the Secretary; and (ii) stop work in New York State and initiate stabilization of disturbed sites, and (iii) undertake restoration of any sites not previously restored, as set forth in the applicable EM&CP and relevant sections of this Certificate and

the BMPs, including, without limitation, section 11 of the BMPs.

2. Certificate Holders' request to amend Certificate Condition 11 is approved consistent with the discussion in the body of this Order. 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

APPENDIX 1

Gating Event	Estimated Timing of Gating Event	Expected TDI Construction Activities upon completion of Gating Event <sup>7</sup>
<p>TDI: Associated Segment EM&amp;CP approval</p>	<p>Q2, 2021 - Q2, 2023</p>	<p><b><u>Construction Activities #1: Q2, 2021 - Q4, 2021</u></b></p> <p><u>Lake Champlain:</u></p> <ol style="list-style-type: none"> <li>1. Gravity Cell installation at one transitional HDD site in Putnam Station.<sup>8</sup></li> </ol> <p><u>Hudson &amp; Harlem:</u> No construction activities.</p> <p><u>Upland:</u></p> <ol style="list-style-type: none"> <li>1. Drilling HDDs in locations to be specified, installation of conduit in HDDs, site restoration.</li> <li>2. Trenching, conduit installation, backfilling and restoration along ~ 17 miles of upland route (see Table 1)</li> </ol> <p><b><u>Construction Activities #2: Q1, 2022 - Q2, 2023</u></b></p> <p><u>Lake Champlain:</u></p> <ol style="list-style-type: none"> <li>1. Route clearing via Grapnel Runs</li> <li>2. Co-located infrastructure mattress installation (where determined to be necessary).</li> </ol> <p><u>Hudson &amp; Harlem:</u></p> <ol style="list-style-type: none"> <li>1. Route clearing via Grapnel Runs</li> <li>2. Gravity Cell installation at four transitional HDD sites (Catskill, Stony Point, Clarkstown, NYC)</li> </ol> <p><u>Upland:</u></p> <ol style="list-style-type: none"> <li>1. Drilling HDDs in locations to be specified, conduit installation, site restoration<sup>9</sup>.</li> <li>2. Trenching, conduit installation, backfilling and restoration along ~ 54 miles of upland route (see Table 2).</li> </ol>

<sup>7</sup> The schedule is the expected construction sequencing, but alterations to this table may occur. Under no circumstances will HVDC/HVAC cables be installed prior to HydroQuebec TransÉnergie (HQT) receiving permits from the Quebec Government for the Canadian Link.

<sup>8</sup> For all horizontal directional drilling (HDD) transitional sites (water to land or land to water) the activity includes, installing Gravity Cell, drilling transitional HDD, installing conduit, removal of Gravity Cell and capping the conduit at both ends.

<sup>9</sup> The exact location of these HDDs will be confirmed in conjunction with the ROW owners. These consultations are ongoing and are required for the final design.

		<p><u>ARC Route (Queens, NYC):</u></p> <p>1. Trenching, conduit installation, backfilling and restoration along the 3.4 mile route from the NYPA Astoria Annex to the Con Ed Rainey Substation.</p> <p><u>Converter Station:</u></p> <p>Begin site preparation, which includes civil work.</p>
<p><u>HQT:</u> Permits issued by Government of Quebec</p>	<p>Q2, 2023</p>	<p><b><u>Construction Activities: Q3, 2023 - 2025</u></b></p> <p>Finish remaining construction activities including installation of remaining conduit and installation of all HVDC/HVAC cables in both land and water.</p>

TABLES

**Table 1**

Segment by Town	Type	Miles	ROW Ownership
Putnam to Whitehall	Upland	17	NYSDOT (82%), Town (12%), County (6%)

**Table 2**

Segment by Town	Type	Miles	ROW Ownership
Whitehall to Fort Edward	Upland	24	Railroad (85%), NYSDOT (15%)
Fort Edward to Saratoga	Upland	17	Railroad (100%)
Rotterdam to Selkirk	Upland	5	Railroad (100%)
Stony Point to Clarkstown	Upland	8	NYSDOT (94%), Town (5%), Private (1%)