

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on May 13, 2021

COMMISSIONERS PRESENT:

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

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 May 14, 2021)

BY THE COMMISSION:

INTRODUCTION

On April 18, 2013, the Public Service Commission
(Commission) granted a Certificate of Environmental
Compatibility and Public Need (CECPN or 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; 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); (altogether the Certificated Project or Facility) pursuant to Public Service Law (PSL) Article VII.²

The HVDC transmission line will be located underground beneath 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 insulating fluids) electric cables, each approximately six inches in diameter. As certified, and amended, the Project will have the capacity to transmit up to 1,000 megawatts (MWs) of electricity into the New York City load pocket. It is

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, 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) (Certificate Order).

anticipated that the electricity transmitted by the Project will be primarily hydroelectric power.

As described more fully below, over the past two years, the Certificate Holders obtained Commission-approved Certificate amendments related to certain Certificate conditions and route modifications. On January 29, 2021, the Applicants filed a petition, pursuant to Section 123(2) of the PSL, to further amend the Certificate (Amendment 4 Petition). As described more fully below, the Certificate Holders seek 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.

Through this Order, the Commission approves the requested Amendment 4 Petition on the modifications to the originally certificated Project pursuant to PSL §123(2) and clarifies Certificate Condition 22(a).

BACKGROUND

The Applicants 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 Applicant 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 (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 right-of-way (ROW). The Amendment 3 Petition was granted on January 26, 2021.

On January 29, 2021, the Certificate Holders filed the Amendment 4 Petition. On May 3, 2021, Administrative Law Judge, James A. Costello, issued a "Ruling on Process," which held that a hearing was not required because the proposed modifications would not result in any material increase in any environmental impact of the Facility and would not result in a substantial change in the location of the Project. Judge Costello concluded that comments made during the Public Statement Hearing and submitted in writing "do not raise any issue of fact" requiring a hearing. Consequently, Judge Costello found no additional litigation process was required and "the matter may proceed to the Commission for final determination."³

NOTICE AND PUBLIC COMMENTS

A "Notice Seeking Public Comment" was issued on April 2, 2021, which requested public comments by April 21, 2021. Hardcopies of the Amendment 4 Petition were mailed to parties as required by PSL §122(2) and pursuant to 16 NYCRR §85-2.10(c). The Amendment 4 Petition was also served via email on active parties to this proceeding and on all potentially newly affected landowners and municipalities in conjunction with its filing of the Amendment 4 Petition. On February 19, 2021, in accordance with the Commission's Rules at 16 NYCRR §85-2.10(c), the Certificate Holders provided seven Affidavits of Publication of the Notice of Application to Amend the Certificate issued by the

³ Ruling on Process (issued May 3, 2021), p. 5.

Commission on April 18, 2013, relating to their Amendment 4 Petition.

On March 30, 2021, a "Notice of Public Statement Hearing" to be held on April 21, 2021, was issued. The Notice provided that "[a]lthough comments will be accepted throughout the pendency of this proceeding, they are requested by April 21, 2021."

After the Amendment 4 Petition was filed, a few groups and individuals provided comments in writing and/or at the Public Statement Hearing opposing the Project as a whole (e.g., noting environmental impacts to Indigenous Peoples of Canada; and impacts to the Hudson River), and a few submitted comments pertaining to the proposed modifications. Comments in support of the modifications to the Amendment 4 Petition were made by a representative of the Engineers Labor-Employer Cooperative 825 (ELEC 825). The comments that specifically address the proposed modifications in the Amendment 4 Petition are addressed below.

City of New York

The City of New York (NYC) submitted a letter, dated April 21, 2021, solely to address the clarification on Condition 22(a) requested in the Amendment 4 Petition regarding the 100-year floodplain. The letter notes its general support of the clarification because a local law recently passed by the New York City Council would require that most structures located in the floodplain be "elevated an additional one-to-two feet, or by the 500-year flood elevation (whichever is higher), to provide additional floodproofing of those structures." Since those requirements will be in effect when the Certificate Holders would begin construction, NYC noted "it is appropriate for CHPE's facilities to be designed to meet the most current standards."

Solidarity Committee of the Capital District

The Solidarity Committee of the Capital District (Solidarity Committee), which noted it has opposed the Project since it was first proposed, commented that a new Environmental Impact Statement (EIS) should be required because of the proposed 25 percent increase, recent routing changes to the Project, changes in corporate structure, and opposition from other organizations.

Notably, however, PSL Article VII applications are exempt from the requirements of the State Environmental Quality Review Act and, consequently, no EIS is required for the Project or its modifications. Through the Article VII review process, a thorough environmental review, similar to that of an EIS, was conducted. As explained below, the modifications associated with the Preferred Transmission System do not create any material increase in environmental impacts as compared to the Certificated Project.

Hudson River Safety, Navigation & Operations Committee

Ian Corcoran, a representative of the Hudson River Safety, Navigation & Operations Committee (HRSNOC), who, the Commission notes, is a party to the Certificate proceeding, submitted comments on April 21, 2021, regarding its interests in the depth of in-water burial in the Hudson River. Attached to its comments, HRSNOC included a resolution asserting the right to be consulted on final burial depth and location. Department of Public Service Staff (Staff) advises that final Facility design, including burial depth details, will be proposed in the Environmental Management and Construction Plan (EM&CP) to be filed, and available for the Association's review and comment, pursuant to Certificate Conditions 95(a), 145, and 152 of the Certificate Order.

Engineers Laborers Employee Cooperative 825 (ELEC 825)

ELEC 825 provided comments during the Public Statement Hearing and filed written comments on April 22, 2021. ELEC 825's comments note support for the Project "because it will create over 1,000 construction jobs and another 1,000 indirect jobs during the nearly four-year construction period" and the Certificate Holders have committed to use union labor. In addition, many of ELEC 825's members reside in New York and acknowledge the benefits of "safe reliable energy sources," economic benefits to New York State "in the form of reduced wholesale electricity costs, lowered CO2 emissions, enhanced economic activity, and taxes paid to local communities along the route."

John Lipscomb

Mr. Lipscomb, a patrol boat operator for Hudson Riverkeeper and voting member of HRSNOC, commented at the Public Statement Hearing. Mr. Lipscomb noted that the Hudson River has been designated by National Marine Fisheries as critical habitat for the Atlantic sturgeon, and that new electromagnetic field (EMF) studies on the effects of the cables on the migrating fish should be conducted.

Here, however, the Applicants have not requested amendments of any applicable Certificate Conditions and are required to follow all such terms and conditions of the original Certificate, including conditions regarding EMF limits. The final Facility design and details of traffic control plans and construction methods are subject to additional detailed plans to be included in the EM&CP that will be subject to public notice, review and comment pursuant to the Certificate Order and Certificate Conditions.

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 modifications to the certificated Project will not result in any material increase in environmental impacts, 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, and there are no disputed issues of material fact, no hearing is required for the Amendment 4 Petition.⁴

⁴ See, e.g., Case 15-T-0165, Petition to Amend Central Hudson's Certificate of Environmental Compatibility and Public Need Granted on May 23, 1995 in Case 91-E-0529 to authorize transmission improvements in the Town of Esopus, Ulster County in connection with the replacement of the Sturgeon Pool substation, Order Approving the Amendment to Central Hudson's Certificate of Compatibility and Public Need - Connection and Construction of Transmission Lines to the Sturgeon Pool Substation (issued July 21, 2015), p. 5; Case 12-T-0158, Petition of Niagara Mohawk Power Corporation d/b/a National Grid for Amendments to Certificates of Environmental compatibility and Public Need, Order Granting Amendments of Certificates of Environmental Compatibility and Public Need (issued April 26, 2012), p. 5 .

DISCUSSION

The Applicants seek approval of certain modifications to the certified Project. The modifications include a Preferred Transmission System which would result in an increase of 1,250 MW nameplate capacity as well as associated modifications to the Project's transmission components. Through this Order the Commission approves the requested modifications.

In their Amendment 4 Petition, the Certificate Holders noted the public benefits of the Project that were contained in the Certificate, including that it would "advance major energy and policy goals" of both the State and New York City,⁵ and would, through the import of "renewable energy," increase supply diversity and enhance system reliability, provide "price stability benefits," and provide an enduring "substantial environmental benefit" by reducing emissions,⁶ have become stronger given actions taken by the State and NYC, such as the Clean Energy Standard proceeding,⁷ since the Certificate was granted. They cite the Commission's statement in the CES proceeding that, "[a]bsent new transmission capacity, the addition of new upstate renewable developments will fail on its own to increase the penetration of renewable energy consumed in New York City to a level that enables statewide compliance with the 70 by 30 Target."⁸

⁵ Amendment 4 Petition, I(2) (citing Certificate Order, pp. 100 and 97).

⁶ Id., (citing Certificate Order, p. 98).

⁷ Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and Clean Energy Standard, Order Adopting Modifications to the Clean Energy Standard (October 15, 2020).

⁸ Id., p. 78.

A detailed description of the proposed changes is provided in the Amendment 4 Petition and discussed below.

Preferred Transmission System

The Amendment 4 Petition requests approval to increase the Project nameplate capacity from 1,000 MW to 1,250 MW with associated modifications to the Project's transmission components. The Certificate Holders indicate that the New York Independent System Operator's "Operating Committee approved the System Reliability Interconnection Study for the proposed 250 MW uprate confirming that an additional 250 MW could be reliably added to the grid."⁹

According to the Certificate Holders, increasing the Project nameplate capacity rating by 250 MW involves the use of high voltage direct current (HVDC) cables, which are nearly identical to those previously approved, with no significant increases in construction, operation, or environmental impacts and no change in location of the Project.¹⁰ The design and mechanical properties of the proposed upland and submarine HDVC cables are similar to the cables originally approved and will not require any modifications to previously approved overland or in-water installation, including the width of the trenches.¹¹ Further, the installation techniques for both upland and submarine burial will not change from the Certificated Project. Consequently, the Preferred Transmission System is not expected to materially increase environmental impacts or change the location of the Certificated Project.

⁹ Amendment 4 Petition, I(5).

¹⁰ Id., I(7).

¹¹ Id., II(13 - 14).

The Amendment 4 Petition also requests approval to increase the footprint of the Astoria converter station from approximately 4.5 acres to approximately 5.5 acres. This would constitute a relatively minor increase given the Certificated Project's ADZ and available land in the Astoria complex. Further, although the footprint will increase by approximately one acre, the environmental impacts are expected to be comparable to those of the Certificated Project and, due to its location in an industrial location, are unlikely to affect any environmental resource.¹²

The design of the High Voltage, Alternating Current (HVAC) system extending from the Astoria East substation to the Rainey substation will use two conductors per phase instead of one conductor per phase, resulting in a narrower but deeper trench configuration, and will be installed in the same location and same manner as currently permitted.

No significant increase in visual impacts is expected because the height of the converter station will be comparable to the one approved in the CECPN.¹³ Other visual impacts of the Preferred Transmission System are expected to be identical to those of the Certificated Project because the HVDC and HVAC cables will be installed in the same locations and manner as the Certificated Project.¹⁴

Noise impacts are expected to be temporary and of the same magnitude and duration as for the Certificated Project.¹⁵ The Certificate Holders indicate that "no material increase in

¹² Id., III(32).

¹³ Id., III(29).

¹⁴ Id., III(28).

¹⁵ Id., III(30).

the audible noise emission from the converter station associated with the Preferred Transmission System as compared to" that of the Certificated Project is expected.¹⁶

The Certificate Holders' consultants conducted a study of the expected thermal and magnetic fields associated with the Preferred Transmission System. The assessment found the expected magnetic fields associated with the proposed modifications are similar to those associated with the Certificated Project with respect to the HVDC cables and are less than the Certificated Project with respect to the proposed HVAC transmission cables.¹⁷ In addition, the study found the expected heat losses from the proposed modifications to the cables are expected to be "significantly less" than that associated with the HVDC cables evaluated for the Certificated Project.¹⁸

The Commission finds that the proposed modifications for the Preferred Transmission System are reasonable. They are not expected to result in any significant change in location of the facility or increase in adverse environmental impacts, and may result in reducing some expected environmental impacts. Accordingly, the amendments for the Preferred Transmission System described in the Amendment 4 Petition are approved.

Certificate Condition 22(a)

The Supplement to the Amendment 4 Petition requests clarification of Certificate Condition 22(a), which states: "the tallest building serving as part of the Converter Station shall

¹⁶ Id.

¹⁷ Id., III (27).

¹⁸ Id., Exhibit B.

not exceed seventy (70) feet in height above finished grade... The finished grade shall be the grade at the elevation of the 100-year floodplain, and such additional minimal fills as necessary to provide drainage at the site." As explained by NYC in its comments in support of the Supplement to the Amendment 4 Petition, filed on April 21, 2021, a local law recently passed by NYC would require that most structures located in the floodplain be "elevated an additional one-to-two feet, or by the 500-year flood elevation (whichever is higher), to provide additional floodproofing of those structures." In the Supplement to the Amendment 4 Petition, the Certificate Holders request the Commission to clarify that no amendment to Certificate Condition 22(a) is required because that condition "sets the minimum elevation for finished grade based on local requirements at the time of construction...." The Certificate Holders further state that the request for clarification presents "neither a material increase in any environmental impact nor a substantial change to the location of the Project Facilities." Further, in their response to a request for additional information from Staff, the Certificate Holders indicated the increase in height for the revised Converter Station is de minimus.¹⁹ The Commission agrees that Condition 22(a) sets the minimum elevation at the time of construction, and the provisions of the applicable NYC local law would apply; consequently, no amendment to Condition 22(a) is necessary.

CONCLUSION

Based on the foregoing, the Commission approves the amendments to the Certificated Project described in the Amendment 4 Petition, subject to the conditions below.

¹⁹ Letter to Secretary regarding floodplain, p. 5.

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 pursuant to Public Service Law §123(2) to include the modifications for the Preferred Transmission System as described in its Petition to Amend Certificate of Environmental Compatibility and Public Need and this Order.

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

3. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary