

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on August 13, 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 August 13, 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 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 ConEdison Rainey substation (the Astoria-Rainey cable).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 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 1,000 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.

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, 2020.²

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).

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

On December 6, 2019, the Applicants 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 include minor routing changes and the relocation of the converter station site. The Applicants state that the Preferred Alternatives are 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."³ According to the Applicants, the proposed changes would result in the addition of approximately 5.8 linear miles of transmission circuit (or less than 2% increase in the total Project length).

Through this order, the Commission approves the requested Amendment 2 Petition on the Preferred Alternatives to the originally certificated Project route.

BACKGROUND

On December 6, 2019, the Applicants filed the Amendment 2 Petition seeking approval of certain preferred alternatives to the certified Project layout. The Applicants filed a supplement to the Amendment 2 Petition on December 20, 2019. Hardcopies of Amendment 2 Petition were mailed to parties as required by PSL §122(2) and pursuant to 16 NYCRR §85-2.10(c). The Amendment 2 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

³ Amendment 2 Petition, at 9.

the Amendment 2 Petition. On December 31, 2020, in accordance with the Commission's Rules at 16 NYCRR §85-2.10(c),⁴ the Applicants provided ten Affidavits of Publication of the Notice of Application to Amend the Certificate issued by the Commission on April 18, 2013, relating to their Amendment 2 Petition.

The Amendment 2 Petition 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 underwater through the narrows of Lake Champlain, to upland road right-of-way (ROW); (2) relocating the route centerline in the Towns of Fort Ann and Whitehall a short distance from the CSX railroad ROW to parallel alignment within Town road ROW; (3) relocating the railroad and street route centerline from the City of Schenectady to the Village of Scotia and the Towns of Rotterdam and Glenville to avoid recently redeveloped areas in 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

⁴ 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).

combined represent an approximately 5.8 linear mile increase in the overall Project's length.⁵

On February 11, 2020, a Notice of Procedural Conference to be held on March 4, 2020, was issued. The Notice stated the primary purpose of the conference was to identify any disputed material issues of fact related to the Amendment 2 Petition. During the March 4 Procedural Conference, no parties in attendance identified any issues of disputed material fact. However, Staff of the Department of Public Service (DPS Staff) requested an opportunity to conduct discovery before it could fully evaluate the Applicants' position that there are no material increases in environmental impacts and no substantial changes in location of facilities that would warrant an evidentiary hearing.⁶

On March 4, 2020, a Notice of Information Forums and Public Statement Hearings was issued, announcing forums and public statement hearings scheduled to take place in Scotia, New York on March 23, 2020. The Notice provided that "[a]lthough comments will be accepted throughout the pendency of this proceeding, they are requested by April 30, 2020." On March 16, 2020, a Notice Postponing Information Forums and Public Statement Hearings was issued to cancel the public statement hearings due to the COVID-19 pandemic and the need to avoid "potentially large public meetings," and stated that a "notice rescheduling these events will be issued in due course."

By email dated May 27, 2020, the Administrative Law Judges (ALJs) requested DPS Staff to inform them by May 28,

⁵ 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.

⁶ March 4, 2020 Proc. Conf. Tr., p. 8.

2020, whether discovery had been completed and, if so, whether Staff contemplated any motion practice with respect to the need for an evidentiary hearing. In addition, the ALJs requested the Applicant and all other parties to address whether there were any material issues of fact requiring an evidentiary hearing by the same date. In its emailed response to the ALJs, copied to all parties, DPS Staff advised that its discovery was completed and that no material increase in the nature or extent of adverse environmental impacts of the Facility are anticipated beyond those originally considered by the Commission during its review and grant of the Certificate. In addition, DPS Staff stated its belief that the potential adverse environmental impacts have been mitigated to the greatest extent practicable through the existing Certificate's Conditions and will be reflected in more detail in the anticipated Environmental Management and Construction Plan (EM&CP) filing and, consequently, there are no material issues of fact that would require an evidentiary hearing.

The Applicants also submitted a response stating that the Preferred Alternatives in the Amendment 2 Petition, individually and in the aggregate, do not create a material increase in any environmental impact associated with the Project. They further noted that no issues of material fact had been raised by the parties at the procedural conference or had been raised in written comments filed with the Commission. No other parties responded to the ALJs request.

The Applicants filed a motion to Conduct Public Statement Hearings by Video Teleconference on May 27, 2020. No parties responded to the motion. On June 3, 2020, the ALJs issued a Ruling Denying Motion to Conduct Public Statement Hearings by Video Teleconference. They reasoned that, "[t]he PSL does not require that public statement hearings be held on

an application for an amendment of a Certificate. Nor does the PSL specify a time by which a public statement hearing scheduled on an application for an amendment of a Certificate must be held." That, "coupled with the constraints imposed on public meetings as a result of the COVID-19 pandemic and all the available options for the public to provide comment on the proposed amendments," constituted the grounds for their denial of the motion.

In addition to denying the motion, the ALJs directed DPS Staff and the Applicants to file formal briefs on the issue of whether an evidentiary hearing is required under PSL 123(2), which states that such a hearing shall be held "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 alternatives set forth in the application" and invited all parties to do the same. DPS Staff, the Applicants and the Sierra Club Atlantic Chapter filed briefs on June 15, 2020. On the same date, the North American Megadam Resistance Alliance (NAMRA) filed a petition seeking an evidentiary hearing.

On June 26, 2020, the Judge Costello issued a Ruling on Evidentiary Hearing, concluding that an evidentiary hearing was not required. The ruling adopted the positions of DPS Staff and the Applicants finding that "[t]he proposed modifications to the certificated Project will not result in any material increase in environmental impacts and the proposed modifications to the previously certificated route of the Project will not result in a substantial change in the location of all or a portion of the Project," and rejected the arguments of NAMRA and the Sierra Club because they failed to cite any legal authority for their assertions that an evidentiary hearing must be held.

PUBLIC COMMENTS

After the Amendment 2 Petition was filed, several groups and individuals submitted comments opposing the Project as a whole and a few commenters requested public hearings and an extension of the comment period. Letters in support of the routing amendments were filed by the Towns of Clarkstown, Stony Point, Haverstraw, and the Village of West Haverstraw. The few comments submitted that specifically address the proposed routing changes in the Amendment 2 Petition are addressed below.

City of New York

In its comments filed on April 16, 2020, the City of New York stated its general support for the Project but noted it had not yet fully evaluated the proposed alternative route in Queens. It further noted that more details would need to be provided to New York City Department of Transportation (DOT) and New York City Department of Environmental Protection (DEP) before the City would be able to ascertain whether the proposed alternative route will create any unmitigable adverse impacts to existing infrastructure. With respect to the proposed alternative location for the converter station, the City noted that the "the increased distance from nearby residential areas arguably makes the alternative location superior to the approved location." Measures to address the City's concerns about construction impacts and minimization needs will be indicated in site-specific EM&CPs to be submitted for public review and Commission approval prior to Facility construction, pursuant to relevant Certificate Conditions and EM&CP guidelines previously approved as part of the Certificate.

Adirondack Park Agency

The Adirondack Park Agency (APA) submitted comments on January 9, 2020, regarding the route change within the Adirondack Park, which would eliminate 4.7 miles of cable from Lake Champlain and install 7.6 miles of cable in the rights of way for County Route 3 and Lake Road in the Town of Putnam and State Route 22 in the Towns of Putnam and Dresden. As the agency responsible for implementation of the Freshwater Wetlands Act, Article 24 of the Environmental Conservation Law, within the Adirondack Park, the APA commented that it should be consulted as to the methods and conditions necessary to prevent or mitigate impacts to wetlands within the Park, and any appropriate certificate conditions or Best Management Practices.

Mr. Karl A. Ohly

Mr. Ohly submitted comments as a representative of Lakeside Farm Properties, LLC., a landowner of parcels within approximately 1.1 miles of the Putnam Station Preferred Alternative. In his comments, Mr. Ohly disputed whether the Town of Putnam had property rights to grant an easement for the underground installation of transmission lines in the proposed highway route along County Route 3 and continuing onto Lake Road. In addition, Mr. Ohly raised concerns about the impacts of the Project on agricultural lands; potential damage to a hand dug well near County Route 3; impacts on the right to farm; impacts on the future placement of underground residential sewer, water, electric, and communications that would be allowed in the ROW; potential adverse impacts from construction on the Farm's bed and breakfast business; unknown potential impacts of the energized cable on livestock. Mr. Ohly stated a preference for the shorter 4.7 miles in Lake Champlain's certified route as opposed to the 6.7 miles overland Preferred Alternative route.

The Applicants informed DPS Staff that they met with Mr. Ohly and reached an understanding and agreement as to the line being located within public road ROW, and not being on the Lakeside Farm property. The Applicants further noted they made provisions for addressing the potential impacts to the Lakeside Farm business and residential uses he had raised. In addition, measures to address adjacent landowner concerns about construction impacts and minimization needs will be indicated in site-specific EM&CPs to be submitted for public review and Commission approval prior to Facility construction, pursuant to relevant Certificate Conditions and EM&CP guidelines previously approved as part of the Certificate.

Hudson River Safety, Navigation & Operations Steering Committee

Hudson River Safety, Navigation & Operations Steering Committee, submitted comments on January 9, 2020, regarding its interests in the depth of in-water burial. The Steering Committee requested to be 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. DPS advises that final Facility design including burial depth details will be proposed in the EM&CP to be filed, and available for these commenters' review and comment, per Conditions 95(a), 145, and 152 of the Order and Certificate.

Rockland County Resident

An individual from Rockland County commented that, in addition to being opposed to the Project as a whole, she had concerns with the Preferred Alternative that would require construction on Route 9W in Rockland County. She questioned

whether a traffic study had been prepared for Department of Transportation review and whether blasting was being proposed. Her concerns include potential financial losses to local businesses, traffic conditions, public safety, Electro Magnetic Fields, and air quality. As noted above, final Facility design and details of traffic control plans and construction methods are subject to additional detailed plans included in the EM&CP that will be subject to public notice, review and comment per the Order and Certificate.

LEGAL AUTHORITY

PSL §122(4) provides that “[a]n application for an amendment of a certificate shall be in such form and contain such information as the commission shall prescribe. Notice of such an application shall be given as set forth in subdivision two.” In addition, under PSL §123(2), “[o]n an application for an amendment of a certificate, the commission shall hold a hearing in the same manner as a hearing is held on an application for a certificate if the change in the facility to be authorized would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of such facility other than as provided in the alternates set forth in the application.”

Because the proposed route modifications to the certificated Project will not result in any material increase in environmental impacts and the proposed modifications to the previously certificated route of the Project will not result in a substantial change in the location of all or a portion of the Project, no hearing is required for the Amendment 2 Petition.⁷

⁷ Ruling on Evidentiary Hearing, p. 4.

DISCUSSION

The Applicants seek approval of certain Preferred Alternative routes to the certified Project layout. The Preferred Alternatives include minor routing changes and the relocation of the converter station. The Applicants state that the Preferred Alternatives are 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."⁸ According to the Applicants, the proposed changes would result in the addition of approximately 5.8 linear miles (or less than 2% increase in the total project length).

In their Amendment 2 Petition, the Applicants noted the public benefits of the Project and the increased need for the Project since its approval, given the passage of State and New York City legislative programs aimed at curbing greenhouse gases (GHG), including the Climate Leadership and Community Protection Act (CLCPA). According to the Applicants, any delay of the approval of the Amendment 2 Petition would not only jeopardize the success of the GHG programs but also jeopardize the ability to close on financing of the construction of the Project, which could delay the in-service date by one year.

A detailed description of each segment of the eight proposed Preferred Alternatives is provided in the Amendment 2 Petition and discussed below.

⁸ Amendment 2 Petition, at 9.

Putnam Station Alternative

The Amendment 2 Petition identifies a routing shift for the certificated route transition from within Lake Champlain to upland at Putnam Station in the Town of Putnam, Washington County. The certificated route did not include upland location within the Town of Putnam. The route would use local roads and NYS Route 22 to avoid shallow water areas known as the "narrows" in southern Lake Champlain between Putnam Station and Whitehall. The revised route deviates approximately two miles at the maximum extent away from the certificated in-water route and would result in an additional 7.6 miles of cables within road ROWs in the Towns of Putnam and Dresden, but it would eliminate approximately 4.7 miles of cable installation within Lake Champlain. The parties explored this alternative during the initial proceeding, but it was not supported by the Applicants at that time due to its determination that the cables could be installed in the Lake using shear plow installation. Based on subsequent analysis by its submarine cable installation contractor, the Applicants no longer support that determination and indicate that impacts on the upland route can be minimized using appropriate construction methods and controls already analyzed for the certificated Project route along portions of NYS Route 22 north of Whitehall. The APA, as a party to the proceeding, should be provided notice regarding appropriate wetland avoidance and mitigation within the Adirondack Park during the EM&CP phase of this proceeding, and an opportunity to comment, in accordance with Certificate Conditions 113 and 152.

Fort Ann Alternative

The Amendment 2 Petition identifies a minor location shift from the certificated route along railroad ROW approximately 500 feet easterly at the widest deviation to a location within Old Route 4, a little-used local dead-end road

generally parallel to the railway and the Champlain Canal. This is a minor routing variance from the certificated route that should avoid wetlands areas along the railway.

Schenectady Alternative

The Amendment 2 Petition identifies a routing shift along the certificated route on railroad corridor and streets within the Town of Glenville and City of Schenectady to another railroad corridor that traverses the Town of Glenville and the Village of Scotia to the Town of Rotterdam. The changes are proposed in order to avoid construction impacts along Erie Boulevard in the City of Schenectady where significant new development has taken place which is likely to involve continued infrastructure work at and below the surface. The certificated route did not include any Facility locations within the Village and the proposed route location varies by approximately 3.5 miles at the widest offset from the certificated route and will result in an additional 1.8 miles of cables installed primarily in Railroad ROWs. While the distance of the relocation away from the originally proposed and certificated facility location is wider than the original study area, the nature and extent of probable impacts are generally similar to those associated with the certificated route and is not expected to represent a significant or material increase in impacts.

Selkirk Rail Yard Alternative

The Amendment 2 Petition requests a relocation of a segment of line routing from the CSX railroad corridor and property at the Selkirk Yards area in Bethlehem to a location along Ward Road at an industrial area, an abandoned rail corridor, Bell Crossing Road and South Albany Road, and utility corridor, and then re-joining the CSX corridor. The relocation is being proposed at the request of CSX, the owner of the railroad ROW and Selkirk Yard, and varies by approximately 0.6

miles from the certificated route and is not expected to result in any significant environmental impacts.

Catskill Creek Alternative

The Amendment 2 Petition requests a shift in Facility location from the CSX rail corridor within the Village of Catskill approximately 500 feet westerly to Allen Street, a local street with limited residential development; and across the Catskill Creek via Horizontal Directional Drill (HDD) installation rather than attachment to the CSX elevated railway bridge, re-joining the certificated route along Route 9W and the CSX railway south of Catskill Creek. The revised route is being proposed at the request of CSX, the bridge owner, which does not want the cables attached to the bridge. The revised route avoids problematic construction conditions at the CSX elevated railway bridge crossing of the Catskill Creek. In addition, the revised route will utilize HDD to avoid impacts to streams, avoid wetland impacts, and implement traffic control plans to minimize traffic impacts during Facility construction. Thus, the revised route is not expected to result in a material increase in environmental impacts as compared to the certified route.

Rockland County Alternative

The Amendment 2 Petition proposes a shift in location of a segment of the certificated Facility location in the Rockland County towns of Stony Point, Haverstraw, and Clarkstown, and the Village of West Haverstraw, including landfall from the in-water Hudson River location at an industrial-quarry location north of the Stony Point Battlefield State Historic Site, continuing westerly along Park Road to NYS Route 9W, and then southerly along Rt. 9W and rejoining the certificated Facility location on Route 9W in the Town of Clarkstown. The Facility relocation essentially bypasses the

certificated Facility location along the CSX railroad corridor through this area by shifting up to nearly one-half mile westerly to the Route 9W corridor. The realignment is needed due to the CSX plans to develop a second rail line adjoining its existing line. The realignment, which will result in an additional 0.7 miles of cables installed primarily in road ROWs, is expected to avoid close proximity to some densely developed residential areas along the railroad by shifting to the mixed use-commercial area along Route 9W. Construction scheduling and traffic control plans will be implemented to minimize traffic impacts during Facility construction. The HDD location for re-entering the Hudson River will shift a short distance southerly from a forested site adjoining State Park land to an industrial-commercial storage yard. Significant environmental impacts are not expected due to the shifts in location of the Facility in this upland routing segment.

Astoria-Rainey Cable Alternative

The Amendment 2 Petition identifies an alternative alignment for the 345 kV AC Astoria-Rainey facility to avoid areas of significant construction challenges associated with existing infrastructure on the certificated route. The alternative route is generally within three to five city blocks of the certificated Facility location and remains in the same neighborhood, with similar land use and character. The analysis provided in Petition Appendix G indicates a significant reduction in construction adjoining residential locations, with a corresponding increase in location adjoining but not within waterfront shoreline and New York City public parkland. The construction plan-level details sought by the City of New York, will be provided in the EM&CP and the City is a party that will have an opportunity to comment. No significant increase in environmental impacts is anticipated by construction and

operation of the Facility due to adoption of the alternative location.

Converter Station Site Alternative

The Amendment 2 Petition identifies a relocation of the certificated Converter Station approximately 1000-feet northerly to an available site within the Astoria generating and utility facilities complex (Astoria Complex). The relocation is being proposed to address landowner preferences for future development and the general area is contained within the Astoria Complex that was previously reviewed for the certificated route. The relocated site will increase the separation distance from the nearest residences, and no increase in environmental impacts is expected to result from the relocation of the converter station within the Astoria site.

CONCLUSION

The Preferred Alternatives are reasonable. They are not expected to result in any significant increase in adverse environmental impacts and they have the support of the affected municipalities. Accordingly, the amendments to the certificated route described in the Amendment 2 Petition are approved.

The Commission orders:

1. Champlain Hudson Power Express, Inc. and CHPE Properties, Inc.'s (Certificate Holders) Certificate of Environmental Compatibility and Public Need shall be amended to include the Preferred Alternatives 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 and subsequent amendments, unless superseded by this Order.

3. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary