ORIGINAL

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Champlain Hudson Power Express, Inc.) **Docket No. ER10-1175-000**

APPLICATION FOR AUTHORITY TO SELL TRANSMISSION RIGHTS AT NEGOTIATED RATES AND REQUEST FOR EXPEDITED ACTION

Pursuant to section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (2006), and Part 35 of the regulations of the Federal Energy Regulatory Commission (FERC or Commission), 18 C.F.R. Part 35 (2009), Champlain Hudson Power Express, Inc. (CHPE or Applicant) respectfully requests authority to charge negotiated rates for the sale of transmission rights on a proposed $3.8 billion, approximately 400-mile, 320 kilovolt (kV) High-Voltage Direct Current (HVDC) transmission project (Project).[1] The Project will originate at the Canada-United States border and consists of two submarine or underground cable systems that will terminate in New York City and Bridgeport, Connecticut, respectively. Each cable system will have a transmission capacity of 1,000 megawatts (MW). Upon completion of the transmission line, CHPE will turn over operational control of the Project to the New York Independent System Operator, Inc. (NYISO) and ISO New England Inc. (ISO-NE), which will operate the line under their respective Open Access Transmission Tariffs (OATT).

The Applicant also requests certain waivers of the Commission's regulations and reporting requirements and respectfully requests that the Commission approve this

---

[1] *Chinook Power Transmission, LLC, Zephyr Power Transmission*, LLC, 126 FERC ¶ 61,134 at P 3 (2009) (hereinafter, Chinook) (noting that high-voltage direct current (DC) transmission is the most cost-effective, efficient and environmentally favorable way of moving large quantities of electricity over long distances due to lower line costs and fewer energy losses as compared to alternating current (AC) systems).

application by **July 2, 2010** in order to meet CHPE's schedules for permitting, financing, and scheduling of the Project.

I. INTRODUCTION

The proposed CHPE Project will be an approximately 400-mile underground HVDC cable that will deliver up to 2,000 MW of hydro and wind power from Canada and the United States to help meet growing energy demands in the New York and New England markets. At an estimated cost of $3.8 billion, the HVDC cable will be placed in waterways or buried along railway routes to minimize impacts to local communities and the environment.

To support its debt and equity financing, CHPE has held a series of discussions with prospective transmission customers. As discussed in more detail in Section VI herein, the recent financial crisis and attendant commercial realities require 75% of the transmission line (1,500 MW) to be presubscribed to anchor customers to ensure the Project's commercial viability. The remainder of the capacity (500 MW) will be sold pursuant to an open season conducted by an independent third party.

Precedent agreements with anchor customers will be negotiated at arm's length and will commit anchor customers to pay a negotiated rate for up to 1,500 MW of guaranteed firm transmission capacity for an expected term of 30 years. Each anchor customer's capacity will be "guaranteed" to the extent that such capacity is not subject to proration in the event that bids for capacity during the open season exceed available capacity. CHPE commits that no affiliate of CHPE will become an anchor customer. In addition, it is not anticipated that any affiliate of CHPE will participate in the open season. The results of the open season will be filed with the Commission.

In the recent past, the Commission has acknowledged the financing realities faced by merchant transmission developers[2] and has reaffirmed its "commitment to fostering the development of merchant transmission projects through [its] adoption of a more flexible approach toward negotiated rate applications . . . ."[3] Accordingly, the Applicant respectfully requests that the Commission grant its request for negotiated rate authority and for presubscription of 75% of the transmission capacity to anchor customers to facilitate the debt and equity financing of this Project.

II. COMMUNICATIONS

Donald Jessome
President and CEO
Transmission Developers, Inc.
Royal Bank Plaza South Tower, Box166
200 Bay Street, Suite 3230
Toronto, Ontario M5J 2J4
P: 416-214-0018
F: 416-352-1634
donald.jessome@transmissiondevelopers.com

Jay Ryan
Vincenzo Franco
Van Ness Feldman, P.C.
Suite 700
1050 Thomas Jefferson St. NW
Washington, D.C. 20007
P: 202-298-1800
F: 202-338-2416
jtr@vnf.com
vbf@vnf.com

William S. Helmer
Senior Vice President and General Counsel
Transmission Developers, Inc.
600 Broadway
Pieter Schuyler Building
Albany, NY 12207
P: 518-465-0710
Bill.helmer@transmissiondevelopers.com

---

2 *Id.* at P 44 ("We acknowledge that as a practical matter, merchant transmission developers face difficulties in financing large transmission projects, such as the 'chicken-and-egg' scenario that arises when generators, purchasers, and transmission owners all wait for the other to commit money to a project before committing themselves. In this respect, the financial commitments made by anchor customers prior to an open season provide crucial early support and certainty to merchant transmission developers, which enables them to gain critical mass necessary to develop these projects.").

3 *Id.* at P 54. *See also id.* at P 46 ("In light of the difficulties in financing merchant transmission projects, we find that the anchor customer model can play a useful role in the continued development of merchant transmission projects.").

III. Description of the Applicant

CHPE is a Transportation Corporation organized and existing pursuant to the Transportation Corporation Law of the State of New York and has its principal place of business at 600 Broadway, Albany, New York. CHPE was established for the purpose of developing and financing the Project and does not own or operate any existing electric generation, transmission, or distribution facilities. CHPE is a joint venture of TDI-USA Holdings Corporation (TDI-USA), a Delaware corporation, and National Resources Energy, LLC (NRE). TDI-USA owns 75% of the interests in CHPE and NRE owns the remaining 25%.

A. TDI-USA

TDI-USA is owned by Transmission Developers Inc. (TDI), a Canadian Corporation, and by Sithe Global TDI LLC (Sithe Global TDI).

1. TDI

TDI is a leading developer of HVDC underwater transmission systems exploring projects in New York, New England, and other regions of the United States. Neither TDI nor any of its subsidiaries owns or operates any existing generation, transmission, or distribution facilities in the United States. TDI is a privately held corporation. The shareholders of TDI that own or control—individually or in the aggregate with their affiliates—a 10% or greater interest in TDI's voting securities are private individuals (Individual Investors), certain funds or other investment vehicles managed by subsidiaries of BlackRock, Inc. (BlackRock), and Gestion RSW Inc. (Gestion RSW)

BlackRock is one of the world's preeminent asset management firms and a provider of global investment management, risk management, and advisory services to institutional, intermediary, and individual investors. In the course of providing investment management and related services, BlackRock and its investment management subsidiaries and investment funds may hold or exercise voting rights with respect to 10% or more of the voting securities in certain "public-utility companies" or "holding companies" within the meaning of the Public Utility Holding Company Act of 2005 (PUHCA 2005).[4] Those interests, however, are passive and qualify for exemption from the Commission's regulations implementing PUHCA 2005.[5]

Except for BlackRock's passive interests, no entity owning or controlling a 10% or greater equity interest in TDI (i.e., the Individual Investors and Gestion RSW) owns or controls a 10% or greater equity interest in any existing electric generation, transmission, or distribution facilities in the United States or in a franchised public utility. Furthermore, none of TDI's Individual Investors is an officer or director of a public utility or an entity that owns or operates existing electric generation, transmission, or distribution facilities in the United States.

2. Sithe Global TDI

Sithe Global TDI is wholly-owned by subsidiaries or affiliates of The Blackstone Group L.P. (Blackstone). Blackstone is one of the world's leading private equity firms

[4] *See BlackRock, Inc.*, FERC-65 Notification of Holding Company Status, Docket No. HC10-1-000, (filed Dec. 31, 2009).

[5] *See BlackRock, Inc.*, FERC 65-A Exemption Notification of Status as Passive Investors, Docket No. PH10-7-000 (filed Dec. 31, 2009). On April 23, 2010, the Commission granted in Docket No. EC10-40-000 a request by BlackRock and its affiliated investment companies and funds for authorizations to acquire securities under section 203(a)(2) of the FPA. *See BlackRock, Inc. and Its Affiliated Investment Management Companies and Applicant Funds*, 131 FERC ¶ 61,063 (2010) (BlackRock Order). The Commission granted, among other things, a blanket authorization under section 203(a)(2) of the FPA for the acquisition of no more than 20% of the voting securities of any publicly-traded "public utility," "electric utility company," "transmitting utility," or "holding company in a holding company system that includes an electric utility company or a transmitting utility," subject to numerous specific conditions, including a commitment that "Applicants will not exercise control over the day-to-day management or operations of any [utility] whose voting securities are acquired under the requested authorizations, except pursuant to separate authorizations under section 203 of the FPA[.]" BlackRock Order at P 15.

and has produced strong returns for its investors since 1988. Through its different investment businesses, as of December 31, 2009, Blackstone had total assets under management of approximately $98 billion. Blackstone's most recent private equity fund, BCP V, represents capital commitments of $21.7 billion and is the largest private equity fund in the world. Combining Blackstone's 62 portfolio companies translates to an aggregate $110 billion of revenues and approximately 704,000 employees, or the equivalent of what would be the 13th largest company by revenue among the Fortune 500 in 2009. Blackstone is expected to commit approximately $800 million in equity financing for the Project and will fund all development expenses.

None of Sithe Global TDI, Blackstone, or any of their affiliates owns or operates any existing electric generation, transmission, or distribution facilities in the United States[6] or is affiliated with a franchised public utility.

B. NRE

NRE is a diversified clean energy development company and a wholly-owned subsidiary of National Resources Group, a limited liability corporation duly organized under the laws of the State of Connecticut. National Resources Group is a real estate development and investment firm that focuses on the redevelopment of corporate and industrial sites in an environmentally sustainable manner. None of NRE, National Resources Group, or any of their affiliates owns or operates any existing generation, transmission, or distribution facilities in the United States or is affiliated with a franchised public utility.

[6] On April 8, 2010, PBF Energy Partners, LP (PBF) announced an agreement to acquire from Valero Energy Corporation the 190,000 barrel per day Delaware City refinery, terminal and pipeline assets and the 218 MW power plant complex. PBF is a partnership composed principally of Petroplus Holdings A.G., Blackstone, and First Reserve Corporation.

IV. PROJECT OVERVIEW

A. Description of the Project Facilities[7]

The proposed project is a 2,000 MW HVDC Voltage Source Converter controllable transmission system, comprising two separate 1,000 MW HVDC bipoles, configured both physically and electrically so that a fault on one bipole will not affect the other bipole. Each of these two bipoles includes two submarine or underground cables connected as a bipole pair. At the Canada-United States border, the Project will link with a system having identical technical characteristics and originating at an HVDC converter station near Hydro-Québec TransÉnergie's 765/315- kV Hertel substation, located southeast of Montreal. The proposed transmission cables will follow an overland route before entering the Richelieu River and traveling to the border between the United States and Canada.

South of the international boundary, the submarine transmission cables will continue through Lake Champlain and travel south to the northern entrance of the Champlain Canal, near Whitehall, New York. To the extent practicable, the submerged cables will continue through the Champlain Canal to Fort Edward, where the canal joins the Hudson River. While the Applicant intends to minimize overland sections of the Project, existing infrastructure and ongoing remediation activities along the Project's proposed route will require limited sections of the HVDC transmission cables to be buried on land. CHPE expects that an overland underground bypass will be necessary to circumvent Lock C12 at Whitehall and Lock C11 at Fort Ann. These bypass sections will likely extend for a combined distance of approximately 2.1 miles along an existing

7 A map showing the Project's route is provided as Attachment A hereto.

railroad right-of-way (ROW). The cables will also use a 0.5-mile-long overland underground route to bypass Lock C9, and an overland underground bypass will be necessary north of the Champlain Canal/Hudson River confluence to avoid activities associated with the Hudson River Polychlorinated Biphenyls Dredging Project. Accordingly, the transmission cables will exit the Champlain Canal near Lock C8 and the cables will be buried within a railroad ROW for a distance of approximately 69.9 miles. The cables will re-enter the Hudson River near the Town of Coeymans, downstream from the City of Albany.

South of Coeymans, the proposed alignment follows the Hudson River to the New York City metropolitan area. Two cables (one bipole) will terminate approximately 318.7 miles south of the United States-Canada border at an HVDC converter station in Yonkers, New York. The remaining two cables will continue along the Hudson River to the entrance of Spuyten Duyvil Creek. The cables will then follow a 65.8-mile-long route through Spuyten Duyvil Creek, the Harlem River, and the East River into Long Island Sound before terminating at a converter station in Bridgeport, Connecticut.

Submarine or underground alternating current (AC) cables will transmit electricity from the HVDC converter stations to substations connected to the electrical grid. From the Yonkers converter station, AC cables will re-enter the Hudson River and travel south along the East River, Spuyten Duyvil Creek, and the Harlem River for a distance of approximately 6.7 miles. The AC cables will terminate in New York City. From the Bridgeport converter station, AC cables will carry electricity a distance of approximately 150 feet to the existing Singer substation, owned and operated by the United Illuminating Company (UI). The Project's precise final route is subject to a number of factors, including resource issues, permitting, land acquisition, and stakeholder agreements.

The approximately 400-mile-long section of the Project located within the United States will be owned by the Applicant and will be under the operational control of NYISO and ISO-NE. The Applicant will not own or operate any transmission infrastructure in Canada; instead, CHPE will work with Hydro-Quebec's transmission arm, TransÉnergie, to link the Project to a connecting transmission line north of the international border. The Applicant is continuing ongoing consultations with TransÉnergie to finalize an agreement regarding the Canadian portion of the Project.

CHPE anticipates that the initial permitting phase of the Project will continue through the second quarter of 2011. Initial site preparation at the converter station sites is currently planned for 2011, with major construction commencing in the summer of 2011. Installation of the HVDC cables is scheduled to be completed in three phases between 2012 and 2014. CHPE anticipates a 2015 commercial operation date (COD) for the Project. The estimated total capital cost is approximately $3.8 billion.

B. Description of Regulatory Activities to Date

U.S. government agencies will issue a number of federal permits and approvals for the Project. On January 27, 2010, CHPE applied to the Department of Energy (DOE) for a Presidential Permit authorizing the construction and operation of electric transmission facilities that cross or connect at the international border. Applications for permits from the U.S. Army Corps of Engineers are expected to be filed in August 2010. Review by all of these agencies will be informed by and predicated on a full review of the Project's environmental impacts pursuant to the National Environmental Policy Act.

In New York State, the five-member Public Service Commission (PSC) has the authority to approve construction and operation of major transmission facilities. The PSC issues of a Certificate of Environmental Compatibility and Public Need following a thorough review of all aspects of the Project. The Department of Public Service participates in those proceedings to represent the public interest. CHPE applied for this certificate on March 30, 2010. Other state agencies will perform review and/or permitting functions pursuant to laws relating to coastal zone management (Department of State), historic preservation (State Historic Preservation Officer), and storm water discharge management (Department of Environmental Conservation). In addition, the State Office of General Services will grant rights to use and occupy state underwater lands. As an electric corporation in New York, CHPE will be regulated in certain respects pursuant to New York's Public Service Law, and the PSC will establish the scope of this regulation in response to a filed petition.

The portions of the Project located in Connecticut are subject to a number of permitting and review requirements administered by the Connecticut Siting Council, the Department of Environmental Protection, and the Connecticut Energy Advisory Board. CHPE will file in June of 2010 two separate applications for Certificates of Environmental Compatibility and Public Need, one for the cable to be located in Connecticut waters and another for the converter station. A municipal building permit and certificate of occupancy will be secured in connection with the converter station. The reliability of the transmission system in New York is the responsibility of NYISO; ISO-NE performs the same function in Connecticut. Interconnection applications for the Project have been filed with both NYISO and ISO-NE. In both NYISO and ISO-NE, the feasibility studies have been completed and accepted. System reliability impact studies will continue to be performed in the months ahead.

V. Request for Negotiated Rates

The Commission has established a four-factor analysis to evaluate merchant transmission owners' requests for negotiated rate authority.[8] Under this four factor analysis, merchant transmission owners must demonstrate that: (1) negotiated rates will be just and reasonable; (2) there is no potential for undue discrimination; (3) there is no potential for undue preference, including affiliate preference; and (4) the project will meet applicable regional reliability requirements and will operate in a coordinated and efficient manner.[9] As discussed below, Applicant's proposal satisfies all four factors of the Commission's analysis.

1. Just and Reasonable Rates

To approve negotiated rates for a merchant transmission project, the Commission must find that the rates are just and reasonable.[10] In determining whether negotiated rates are just and reasonable, the Commission first looks to whether a merchant transmission owner has assumed the full market risk for the cost of constructing a particular transmission project and whether any "captive" customers would be required to pay the cost of the project.[11] The Commission also will consider whether the merchant transmission owner (or an affiliate) already owns transmission facilities in the particular region of the project; whether the merchant transmission owner is capable of erecting any

---

8 Chinook at P 37.

9 *Id.*

10 *Id.* at P 38.

11 *Id.*

barriers to entry among competitors; and whether the merchant transmission owner would have any incentive to withhold capacity.[12]

CHPE will assume all market risks for the Project and there are not, nor will there be, any captive customers. The Project will succeed or fail based on whether a market exists for the proposed HVDC line, and CHPE has no ability to pass on any of the costs associated with the Project to captive ratepayers. Additionally, CHPE is a new market entrant and does not own or operate any existing electric facilities in the NYISO or ISO-NE regions; further, no affiliate of CHPE owns or operates any electric facilities in these regions.

When the transmission line is completed, CHPE will turn operational control of the line over to ISO-NE and NYISO, which will operate the line under their respective OATTs. This will prevent CHPE from acquiring market power or controlling barriers to entry in the New England and New York markets. Another disciplining force on the negotiated rates is the cost of expansion of neighboring utilities. Incumbent transmission owners have an obligation under the NYISO and ISO-NE OATTs to expand their transmission capacity, upon request, at cost-based rates.[13] Thus, no entity will purchase transmission service from CHPE unless it is cost-effective to do so when compared to the incumbent transmission owners' cost of expanding capacity.[14] In addition, the Commission has recognized that negotiated rates for service over merchant transmission

---

12 *Id.*

13 *See* section 15.4 of NYISO' OATT (New York Independent System Operator, Inc., FERC Electric Tariff, § 15.4, Original Volume No. 1, Original Sheet No. 124) and section II.31.4 of ISO-NE's Transmission Markets and Services Tariff (ISO-NE FERC Electric Tariff No. 3, Open Access Transmission Tariff, § II.34.4, First Revised Sheet No. 541-43). *See also Northeast Utils. Serv. Co.*, 127 FERC ¶ 61,179 at P 27 (2009) (utilities that turned over operation control of their existing transmission facilities to an independent system operator are not relieved "of their residual obligations under Order No. 888 to expand [their] system upon request.").

14 Chinook at P 57.

lines are effectively capped at the differential in power prices between markets at either end of the lines.[15] Finally, the anchor customers likely to subscribe to the Project are sophisticated utilities that would only secure transmission service at competitive rates.

2. **Undue Discrimination**

To prevent the exercise of undue discrimination by merchant transmission owners with negotiated rate authority, the Commission requires merchant transmission owners to: (1) file the results of the open season (including the terms and conditions governing the conduct of the open season); and (2) commit to turn over operational control of the merchant transmission facilities to a regional transmission organization (RTO) or independent system operator (ISO).[16] Open seasons must be fair, transparent, and non-discriminatory, and open season reports filed with the Commission must include the terms and conditions of the open season, the methods used to evaluate bids, the identity of parties purchasing capacity, and the amount, term, and price of the capacity.[17]

CHPE unequivocally commits to hold an open season for any transmission capacity not secured by anchor customers. Moreover, CHPE will offer the same rates, terms, and conditions given to anchor customers to any open season participant willing to purchase transmission capacity for the same term. To ensure transparency, the specific rules of the open season, detailed bidding guidelines, estimated rates, and precedent agreements will be posted on an internet website and forwarded to interested parties. CHPE also will provide public notice of the open season in appropriate trade

---

15 *Tres Amigas LLC*, 130 FERC ¶ 61,207 at P 64 (2010).

16 Chinook at P 40.

17 *Id.* at P 41.

publications.[18] Additionally, the Applicant will retain an independent third-party consultant to conduct, evaluate, and rank the open season bids based on the greatest total net present value to CHPE, including any proposed changes to the standard form precedent agreement. Once agreements have been executed, CHPE will post on its website the winning bidder's name, quantity, the expiration date of the transmission rights awarded, and the contact information of the bidder for purposes of potential resale of the transmission rights. Further, the results will be provided to the Commission within 30 days of the close of the open season.

In addition to the commitments made concerning the open season, CHPE will: (1) ensure that books and records for the project will comply with the Uniform System of Accounts in Part 101 of the Commission's regulations[19] and will be subject to examination as required in Part 41 of the regulations;[20] (2) file financial statements and reports in accordance with Part 141 of the Commission's regulations;[21] and (3) employ an independent auditor to audit its books and records.

3. Undue Preference and Affiliate Concerns

In the context of merchant transmission, issues regarding undue preference and affiliate abuse can be adequately addressed if a merchant transmission owner is unaffiliated with anchor customers, participants in the open season, and/or customers that subsequently take transmission service on the merchant line.[22] Further, transmission

---

18 Similar to the open seasons conducted by Chinook and Zephyr, a successful bidder will have to meet reasonable credit requirements, identify the amount of transmission capacity and the length of term desired, and commit to a standard form precedent agreement.

19 18 C.F.R. Part 101.

20 *Id.* Part 41.

21 *Id.* Part 141.

22 Chinook at P 58.

rights secured on a merchant transmission line after the open season must be transacted in the secondary market according to the tariff of the RTO or ISO operating the line.[23]

None of CHPE's affiliates owns or operates electric facilities in ISO-NE or NYISO and the Project will not interconnect with any existing facilities owned by an affiliate of Applicant. Applicant commits that no anchor customer will be affiliated with CHPE. Moreover, Applicant anticipates that no participant in the open season will be affiliated with CHPE. CHPE will employ safeguards previously approved by the Commission, such as using an independent consultant to evaluate open season bids and filing the consultant's post-open season report with the Commission, which will eliminate the potential for affiliate abuse in the event that affiliates do participate in the open season.[24] In the event that affiliates participate in the open season, CHPE will maintain separate books of account and records in accordance with the Commission's regulations. Consequently, there will be no opportunity for affiliate abuse.

To prevent any undue discrimination from occurring, CHPE will turn over operational control of its facilities to ISO-NE and NYISO. CHPE will file electric quarterly reports (EQRs) of its transactions as required of transmission providers, will comply with any applicable affiliate rules, and will be subject to the Commission's Standards of Conduct, to the extent any affiliate takes transmission service on the Project.[25]

---

23 *Id.* at P 51.

24 *Id.* at P 65.

25 The Commission has clarified that the Standards of Conduct apply only when a transmission provider engages in transmission transactions with an affiliate. *Standards of Conduct for Transmission Providers*, Order No. 717-A, 74 Fed. Reg. 54,463 (Oct. 22, 2009), FERC Stats. & Regs. ¶ 31,297 at P 16-18 (2009). Furthermore, pursuant to 18 C.F.R. § 358.1(c), CHPE may request a waiver from the requirements of the Standards of Conduct as a public utility transmission owner that participates in

4. **Regional Reliability and Operational Efficiency**

To facilitate regional reliability and enhance operational efficiencies, the Commission expects merchant transmission developers to consider turning over operational control of the transmission facilities to an RTO or ISO.[26] Merchant transmission facilities also must comply with all mandatory reliability requirements. CHPE commits to turn over operational control of the Project and will comply with all applicable reliability rules.

VI. JUSTIFICATION FOR 75% PRESUBSCRIPTION TO ANCHOR CUSTOMERS

Recognizing the commercial realities facing independent transmission development in the United States, the Commission has stated that it "will evaluate any proposal to allocate *all or a portion* of initial capacity outside of an open season on a case-by-case basis . . . ."[27] For the reasons articulated below, CHPE believes there is good cause shown to grant CHPE's request for authority to presubscribe 75% of the Project's capacity to anchor customers.

A. Debt Financing Requires Timely Establishment of Long-Term Contracts

CHPE has applied for a DOE loan guarantee that would provide $3 billion in debt financing for the development of the Project.[28] To continue to be eligible for this financing, however, CHPE must meet a number of milestones. Foremost among these requirements is: (1) a statutory mandate to commence construction of the project by

---

Commission-approved RTOs, to the extent that CHPE does not operate or control its transmission system and has no access to transmission function information.

26 Chinook at P 52.

27 *Id.* at P 42 (emphasis added).

28 Department of Energy Solicitation DE-FOA 0000132. CHPE's loan guarantee application was selected by DOE to proceed into Phase II of the loan guarantee program.

September 30, 2011;[29] and (2) establishment of long-term agreements that will support the term and size of the debt financing.[30]

Consequently, in order to secure debt financing, CHPE must *timely* demonstrate to DOE that it has commitments from creditworthy customers of sufficient scope and duration to support repayment of the $3 billion of debt. Private commercial lenders would have similar requirements. As a practical matter, this means that CHPE must execute 30-year agreements for 75% of the Project's capacity. Moreover, it must execute these contracts in a timeframe that will allow CHPE to commence construction of the project by the September 2011 deadline.

To meet this milestone, CHPE will need FERC authorization (ideally by July 2, 2010) to begin the process of executing these agreements. CHPE's next meeting with DOE is scheduled for July 2010 and CHPE believes that it is critical, at that time, to demonstrate that it has the regulatory approvals necessary to timely secure agreements that will support the debt financing. In the absence of an ability to bilaterally negotiate 75% of the Project's capacity, it will be significantly more difficult for CHPE to meet the requirements of the DOE loan guarantee program (thereby potentially terminating development of the Project).

---

29 American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 406, 123 Stat. 115, 145 (2009).

30 The execution of long-term off-take arrangements with creditworthy customers that can support the term and size of the debt is a condition typically required by commercial lenders in project financing markets. With respect to DOE, the Energy Policy Act of 2005's provisions regarding financing of innovative energy technologies require that DOE make a determination that there exists a "reasonable prospect of repayment of the principal and interest" prior to providing a loan guarantee. Energy Policy Act of 2005, § 1703, 42 U.S.C. § 16512 (2009).

B. Equity Financing Requires the Establishment of Long-Term Contracts

Unlike other recent merchant transmission projects of this size,[31] private capital is providing the equity financing for the Project. Assuming CHPE secures a DOE loan guarantee and receives all other required approvals, including final approval from the Blackstone Investment Committee, Blackstone is expected to commit approximately $800 million to support the development and construction of the Project. Blackstone also is committing significant resources to support near-term development activities; for example, Blackstone is funding approximately $15 million of interconnection and related studies over the next two months.

In order for Blackstone to remain committed to the Project, it continually assesses whether the Project is commercially viable. CHPE must, therefore, demonstrate to Blackstone that it can *timely* secure long-term transmission contracts of sufficient duration (30 years) to support DOE's loan guarantee of $3 billion. The only mechanism to achieve this objective (and thereby meet the statutorily-mandated construction date of September 2011) is the execution of bilaterally negotiated contracts for 75% of the Project's transmission capacity. Without this authority, the Project will be subject to unacceptable levels of risk for private equity investors, thereby likely terminating Blackstone's continued participation in CHPE.

C. The Unique Commercial and Geographic Characteristics of the Project Support Bilateral Negotiations for 75% of the Transmission Capacity

CHPE must secure 30-year commitments from highly creditworthy anchor customers to support the debt and equity financing of the Project. Given the location of the Project's origin at the Canadian border and the fact that Canadian supply consists

[31] *See, e.g.*, Chinook.

primarily of large vertically-integrated utilities, potential anchor customers that control generation resources sufficient to support 30-year agreements with CHPE are likely to be predominantly large vertically-integrated Canadian utilities. Thus, as a practical matter, it would be inefficient, and likely cause unnecessary delay, to hold an open season when only a limited number of potential customers will likely agree to expected 30-year commitments. Conversely, it will be more efficient for CHPE to enter into bilateral negotiations with these entities.

Moreover, by allowing CHPE to bilaterally negotiate 75% of the capacity with highly creditworthy customers at expected 30-year terms—and thereby ensuring the commercial viability of the project—the Commission provides more flexibility in the open season. Specifically, if 75% of the capacity is subscribed for a 30-year term, it will reduce the need for 30-year commitments from open season participants (i.e., potential customers participating in the open season could bid on capacity for shorter terms).[32] Consequently, a greater number of parties are likely to participate in the open season because of the financial commitments made by the anchor customers. Further, given the timing and commercial constraints associated with the DOE loan guarantee program, a requirement to conduct an open season for more than 25% of the capacity may result in termination of the Project. This would have the perverse effect of precluding potential customers from accessing new markets.

For all of these reasons, CHPE believes the unique circumstances of the Project support a Commission finding that upfront bilateral negotiations for 75% of the Project's capacity is both commercially necessary and in the public interest. Without approval of

---

32 As noted above, the open season will be conducted by an independent third-party.

the instant application, there is a substantial likelihood that the Project will not be developed.

D. Granting CHPE's Application Will Foster Additional Entry of Private Equity to Support New Transmission Development

The recent financial crisis has made it extremely difficult to secure capital necessary to support new transmission development in the United States. CHPE met with a number of potential investors, including financial institutions and utilities, to support development of the Project; in the end, however, with capital markets in disarray, Blackstone was the only entity with sufficient resources and risk appetite to support the Project. To the extent Commission policy can be sufficiently flexible on a case-by-case basis to ensure the commercial viability of merchant transmission projects, additional sources of private equity—which is the most risk-oriented and entrepreneurial capital available—are likely to follow Blackstone's lead and support merchant transmission development. Additional transmission investment, in turn, will improve reliability, reduce congestion, and facilitate the delivery of additional sources of low-cost and/or renewable sources of power to new markets.

VII. Request for Expedited Approval

CHPE is scheduled to meet with DOE in July 2010 as part of the ongoing review process of its pending loan guarantee application. At that time, it will be crucial for CHPE to demonstrate to DOE that it has authority from FERC to negotiate letters of intent with customers for 75% of the Project's capacity. The FERC order will provide further evidence to DOE that CHPE: (1) is timely securing its necessary regulatory and permitting approvals; (2) is commercially viable; and (3) will be able to commence construction of the project by the statutorily-mandated deadline of September 2011.

Additionally, Blackstone will commit significant resources over the next few months to support project development, including capital for costs associated with interconnection studies. Because these costs are substantial, Blackstone's continued funding is contingent on certainty that CHPE remains commercially viable (i.e., that CHPE will be able to represent to DOE that it can timely secure long-term contracts to match the debt financing). Accordingly, CHPE respectfully requests that the Commission grant this application for negotiated rate authority by **July 2, 2010**.

VIII. Request for Waivers

CHPE respectfully requests a waiver of certain regulatory requirements applicable to public utilities. Upon completion of the Project, CHPE will own facilities used for the transmission of electricity in interstate commerce and, therefore, will be a public utility. The Commission explained in *Multitrade* that public utility status attaches at "the earlier of the date when [an entity] commences interstate sales or transmission, or when the Commission accepts a voluntary rate filing."[33] Because CHPE does not tender for filing with this application a proposed tariff or rate schedule and does not yet provide transmission service, Commission action on this application will not, *per se*, make CHPE a public utility under *Multitrade*. However, CHPE respectfully requests that the Commission grant at this time the waivers discussed below, which will become effective when CHPE becomes a public utility.

In particular, CHPE requests waiver of: (1) the full reporting requirements of Subparts B and C of Part 35 of the Commission's regulations (except for Sections

[33] *Multitrade Limited Partnership*, 63 FERC ¶ 61,252 at 62,692 (1993). In *Multitrade*, the Commission explained that "if an entity chooses to consent to FPA jurisdiction at a date earlier than the date it commences sales for resale or transmission of electric energy in interstate commerce by having a rate schedule accepted for filing prior to the commencement of service, that entity will be subject to FPA jurisdiction for all purposes upon the acceptance of the filing." *Id.*

35.13(a), 35.13(b), and 35.16); and (2) the Form No 1, Annual Report of Major Electric Utilities, Licenses and Others (Form 1) filing requirement. The Commission has granted similar waiver requests to other merchant transmission owners seeking negotiated rate authority.[34] Additionally, CHPE respectfully requests waiver of any other part of the Commission's regulations as necessary to the grant the authorizations requested herein.

IX. CONCLUSION

WHEREFORE, for all of the reasons stated herein, CHPE respectfully requests that the Commission grant its request for: (1) authority to sell transmission rights at negotiated rates and presubscribe 75% of the Project's capacity to anchor customers; and (2) certain waivers of the Commission's regulations. CHPE also respectfully requests that the Commission issue an order on this application on or before **July 2, 2010**.

Respectfully Submitted,

Jay Ryan
Vincenzo Franco
Van Ness Feldman, P.C.
Suite 700
1050 Thomas Jefferson St. NW
Washington, D.C. 20007
P: 202-298-1800
F: 202-338-2416
jtr@vnf.com
vbf@vnf.com

Counsel for Champlain Hudson Power Express, Inc.

May 3, 2010

[34] Chinook at PP 68-69.

ATTACHMENT A

MAP

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on the following public service commissions and regional transmission organizations by first class mail with postage prepaid:

New York State Public Service Commission

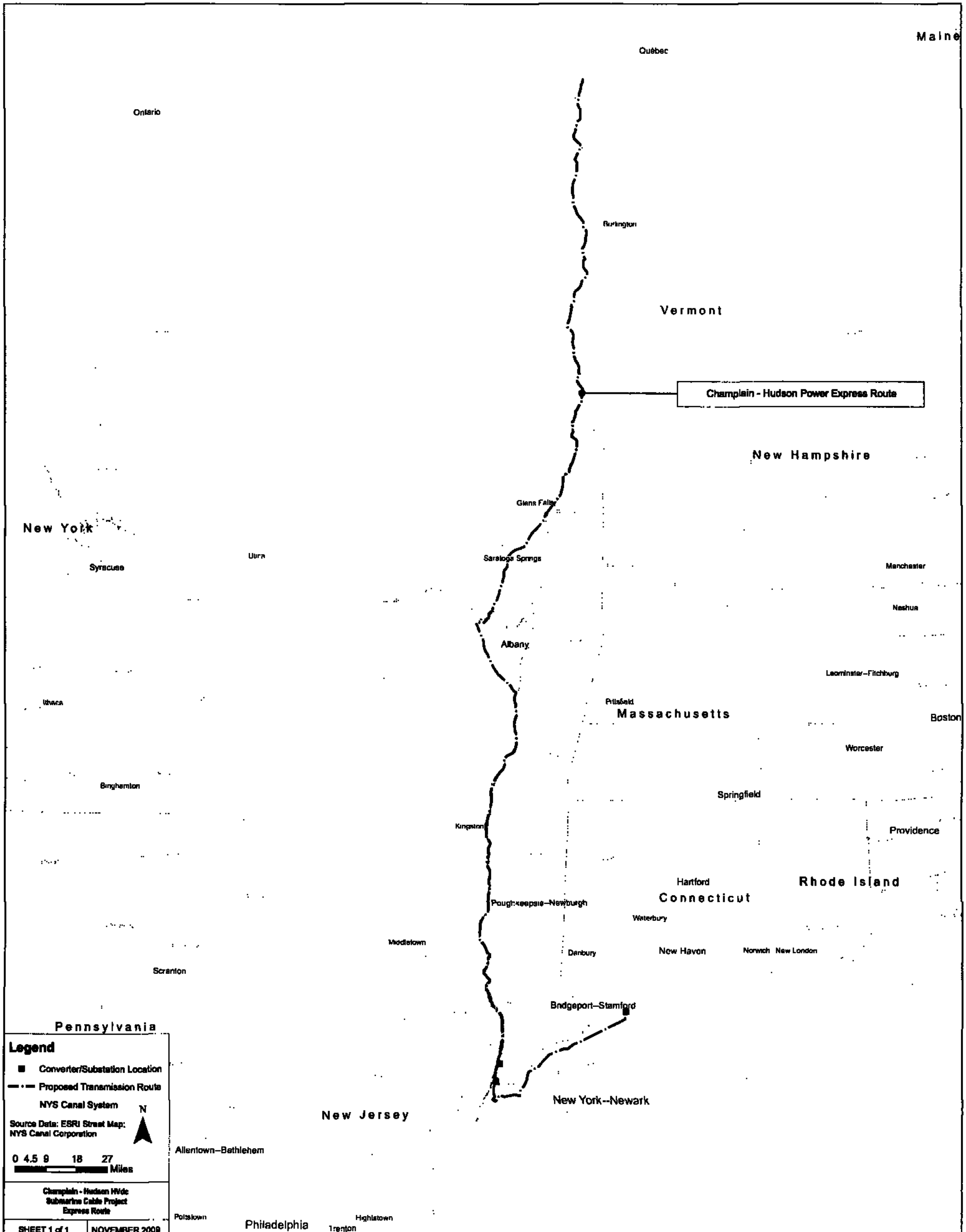
Connecticut Department of Public Utility Control

New York Independent System Operator

ISO New England

DATED at Washington, D.C. this 3rd day of May, 2010.

Jay Ryan
Vincenzo Franco
Van Ness Feldman, P.C.
Suite 700
1050 Thomas Jefferson St. NW
Washington, D.C. 20007
P: 202-298-1800
F: 202-338-2416
jtr@vnf.com
vbf@vnf.com


Québec
Maine
Ontario
Burlington
Vermont
Champlain - Hudson Power Express Route
New Hampshire
Glens Falls
New York
Syracuse
Utica
Saratoga Springs
Manchester
Nashua
Albany
Leominster–Fitchburg
Ithaca
Pittsfield
Massachusetts
Boston
Worcester
Binghamton
Springfield
Kingston
Providence
Hartford
Rhode Island
Poughkeepsie–Newburgh
Connecticut
Waterbury
Middletown
Danbury
New Haven
Norwich
New London
Scranton
Bridgeport–Stamford
Pennsylvania
Legend
Converter/Substation Location
Proposed Transmission Route
NYS Canal System
Source Data: ESRI Street Map; NYS Canal Corporation
N
0 4.5 9 18 27
Miles
New York–Newark
New Jersey
Allentown–Bethlehem
Champlain - Hudson HVdc Submarine Cable Project Express Route
SHEET 1 of 1
NOVEMBER 2009
Pottstown
Philadelphia
Trenton
Hightstown