

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Verified Petition of CHPE LLC and CHPE Properties, Inc., for an Order Granting Certificate of Public Convenience and Necessity Pursuant to Section 68 of the Public Service Law

Case 21-E-_____

**VERIFIED PETITION OF CHPE LLC AND CHPE PROPERTIES, INC., FOR AN
ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY PURSUANT TO SECTION 68 OF THE PUBLIC SERVICE LAW.**

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On April 18, 2013, the New York State Public Service Commission (the “Commission”), acting pursuant to Article VII of the New York State Public Service Law (the “PSL”), issued an Order (the “April 2013 Order”) granting to Champlain Hudson Power Express, Inc. (“CHPEI”) and its wholly-owned subsidiary, CHPE Properties, Inc. (“Properties”), as co-holders, a Certificate of Environmental Compatibility and Public Need (the “Certificate”) authorizing CHPEI and Properties to build, maintain, and operate the Champlain Hudson Power Express Project (the “Project”).¹ The Project is a high voltage, direct current transmission line extending approximately 339 miles from the international border with Canada to a converter station in Astoria, Queens.

On July 16, 2020, the Commission issued an order approving, among other things, an intra-corporate reorganization through which (1) CHPEI would convert from a corporation to a limited liability company (CHPE LLC), (2) CHPEI would transfer its interests in the Certificate from

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 for the Construction, Operation and Maintenance of a High Voltage Direct Current Circuit from the Canadian Border to New York City*, Order Granting Certificate of Environmental Compatibility and Public Need (April 18, 2013).

CHPEI to CHPE LLC, and (3) Properties would continue as a wholly-owned subsidiary of CHPE LLC.² The reorganization took place on August 28, 2020. For the purposes of this filing, “Certificate Holders” refers to CHPE LLC and Properties or to CHPEI and Properties, as the context dictates.

Certificate Holders respectfully submit this Verified Petition seeking a Certificate of Public Convenience and Necessity (“CPCN”) pursuant to § 68 of the New York State Public Service Law (the “PSL”) and Parts 17 and 31 of the Commission’s rules to construct, own, and operate the Project and to exercise rights and privileges granted under various municipal consents. As will also be shown herein, Certificate Holders have sufficient financial resources and the necessary expertise to construct, own, and operate the Project.

Certificate Holders request that the Administrative Law Judge assigned to this proceeding establish, as early as possible, a schedule for discovery and submission of additional, relevant information obtained through discovery or otherwise. If a hearing is required, Certificate Holders request that a public statement hearing be scheduled in satisfaction of the hearing requirements of PSL § 68 and, if no comments or information, oral or written, raise any material issues of fact, that no evidentiary hearings be held.

I. BACKGROUND

A. The Parties

CHPE LLC is a limited liability company organized and existing under the laws of the State of New York and is a special purpose entity created for the purpose of constructing, owning, and operating the Project. Properties is a transportation corporation organized and existing under

² 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 (July 17, 2020) (the “Transfer Order”).

the New York State Transportation Corporations Law (the “TCL”) and an electric corporation as defined by the TCL. Both entities are electric corporations as defined by the PSL and are subject to a lightened regulatory regime.³

CHPE LLC is a wholly-owned subsidiary of TDI-USA Holdings LLC a/k/a Transmission Developers (“TDI”), a development company that is majority-owned by The Blackstone Group, Inc. (“Blackstone”).⁴ TDI develops unique clean energy transmission projects in an environmentally responsible manner. It uses proven high-voltage direct current (“HVDC”) cable technology to link generation resources such as solar, wind, hydro, and other renewables with markets that are seeking new sources of clean power. By installing cables underground or underwater, the Project avoids the negative impacts of overhead transmission and increases the electric grid’s safety and reliability, while providing hardened infrastructure that is less susceptible to damage from natural disasters. TDI has extensive experience working within the region to develop merchant transmission lines. Through the efforts and expertise of its management team, the Project has attained a very advanced stage of development.

In addition to the Project, the same management team is also developing the New England Clean Power Link project (“NECPL”). NECPL is a proposed 1,000 megawatt (“MW”), 154-mile buried HVDC transmission line that aims to link Canada to the New England Grid via a route through Vermont. NECPL is also fully permitted and well supported within the region.

³ See Case 13-E-0392: *Petition of Champlain Hudson Power Express, Inc. and CHPE Properties, Inc. for a Declaratory Ruling that the Companies are Subject to a Lightened Regulatory Regime, and a Declaratory Ruling that a Prior Transfer of Ownership did not Require Commission Approval or in the Alternative Approving Such Transfer, Declaratory Ruling and Order Concerning Ownership Transfer and Providing for Lightened Rate Making Regulation* (January 21, 2014).

⁴ More information on Blackstone can be found at <https://www.blackstone.com>.

B. The Project

The Project involves a collaboration between Hydro-Québec, TDI, and their respective affiliates to develop a new intertie between the Hydro-Québec and New York State transmission systems, and it is part of a packaged proposal now before the New York State Energy Research and Development Authority regarding the delivery and supply, at a converter station in the borough of Queens in New York City (“NYC”), of renewable energy and associated Tier 4 Renewable Energy Credits (the “Interconnection Point”). Hydro-Québec will build, operate, and bear the total cost and risks associated with construction of the Québec Link (defined below), which is expected to be primarily sited within public rights-of-way. Because the Québec Link is much shorter than the Project, the duration of its construction phase is significantly shorter. The in-service date for the entire system is expected to occur in late 2025.

In Canada, hydroelectric power will flow from generation sites in Québec to the Hertel Substation, which is served by four 735 kV lines, ensuring a reliable connection. The energy will then be converted from high-voltage alternating current (“HVAC”) to HVDC and transmitted over a new 37 mile buried HVDC transmission line in Québec to an interconnection point at the U.S.-Canada border (the “Quebec Link”). The Project will begin at the U.S.-Canada border under Lake Champlain and extend approximately 339 miles southward to the Interconnection Point, where the power will be converted from HVDC to HVAC. Approximately 60% of the line is located in waterways (under Lake Champlain and the Hudson and Harlem Rivers) and the rest is buried within existing rights-of-way.

Project History

On March 30, 2010, the Certificate Holders submitted the original Certificate application and initiated a three-year process that culminated with the issuance of the April 2013 Order

granting the Certificate. The Certificate Holders carried their burden of demonstrating that the Project would serve the public interest, convenience, and necessity, and the Commission made all of the findings that, by statute, must accompany issuance of a certificate pursuant to Article VII of the PSL (*see* PSL §126). Furthermore, during the process leading to issuance of the April 2013 Order, the Applicants successfully built a coalition of affected parties, and, after a significant and productive process, that coalition produced the joint proposal of settlement that formed the basis of the Commission’s favorable decision (the “Joint Proposal”). The Commission issued the April 2013 Order granting the Certificate to the Certificate Holders on April 18, 2013.⁵

With respect to the Project’s public benefits, the April 2013 Order took note of the Project’s “unique and substantial benefits” and concluded that it would “advance major energy and policy goals” of both New York State and NYC.⁶ The Commission also concluded that the Project would provide a “significant amount of additional capacity that would enhance energy security” in NYC and, through the import of “renewable energy,” would increase supply diversity and enhance system reliability.⁷ In addition, the Commission noted that the Project would serve to facilitate proper functioning of the energy markets in the State and would afford “price stability benefits.”⁸ At the heart of the Commission’s determination to grant the Certificate was the conclusion that “the Facility’s expected emission reductions are a substantial environmental benefit, a benefit that is expected to be enduring.”⁹

⁵ 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 Certificate of Environmental Compatibility and Public Need (April 18, 2013).

⁶ April 2013 Order, at 100.

⁷ *Id.*, at 97.

⁸ *Id.*, at 97.

⁹ *Id.*, at 52.

Since the Certificate was issued, the need for rapid and substantial efforts to address and reduce the amount of greenhouse gases (“GHG”) released into the atmosphere due to human activity has become increasingly evident. In 2019, both NYC and the State adopted major legislative programs aimed at curbing GHG. On April 18, 2019, the NYC Council adopted the Climate Mobilization Act, which includes measures that will reduce the carbon footprint of large commercial buildings.¹⁰ The State moved no less dramatically to curb GHG in 2019. On July 18, 2019, Governor Cuomo signed into law the Climate Leadership and Community Protection Act, the most ambitious effort to curtail GHG emissions adopted to date by any state.¹¹ This landmark legislation will require the deployment in the State of very significant amounts of new renewable energy in order to meet the goal of having 70% of the State’s energy needs supplied by renewable energy in less than a decade.

In the Clean Energy Standard proceeding, the Commission recently re-emphasized the need for increased deliveries of renewable energy to NYC. According to the Commission, “without displacing a substantial portion of the fossil fuel-fired generation that New York City currently relies upon, the statewide 70 by 30 Target would be difficult to achieve.”¹² “[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.”¹³

¹⁰ Local Law 97 of 2019; NYC Charter Chapter 26 Section 651; NYC Code, Title 28, Chapter 3, Article 320; NYC Code, Title 28, Chapter 3, Article 321.

¹¹ <https://www.governor.ny.gov/news/governor-cuomo-executes-nations-largest-offshore-wind-agreement-and-signs-historic-climate>

¹² 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), at 78.

¹³ *Id.*

Since the Certificate was issued, the Certificate Holders have worked diligently, in parallel efforts, to obtain the additional governmental permits and approvals necessary in order to fully and finally authorize construction and operation of the Project, to conduct outreach and coordination efforts directed at interested stakeholders, to finalize the commercial arrangements that will allow for Project financing, and to refine the Project construction program with a view towards further minimization of Project impacts.

C. Municipal Consents/Franchises

From the Canadian border to Astoria, Queens, approximately 60% of the Project will be installed underwater in Lake Champlain and the Hudson and Harlem Rivers. The remainder of the route will be buried underground and traverse 39 municipalities, impacting public property in 35 of those 39.¹⁴ The municipal consents provided for by §11(3) of the TCL have been obtained from 33 of the 35 affected municipalities as follows:

- Washington County: Town of Putnam, Town of Dresden, Town of Whitehall, Village of Whitehall, Town of Fort Ann, Village of Fort Ann, Town of Kingsbury, and Village of Fort Edward.¹⁵
- Saratoga County: Town of Moreau, Town of Northumberland, Town of Wilton, Town of Greenfield, City of Saratoga Springs, Town of Milton, Town of Ballston, and Town of Clifton Park.
- Schenectady County: Town of Glenville, Village of Scotia, and Town of Rotterdam.

¹⁴ Although the Project's terrestrial route passes through 39 municipalities, the Project does not cross public property or rights-of-way in three municipalities (Hartford, Ravena, and Athens) and did not require public action.

¹⁵ The Town of Fort Edward also provided a supportive resolution even though no public property is crossed, and no municipal consent required.

- Albany County: Town of Guilderland, Village of Voorheesville, Town of New Scotland, and Town of Coeymans.
- Greene County: Town of New Baltimore, Town of Coxsackie, Village of Coxsackie, Town of Catskill, and Village of Catskill.
- Rockland County: Town of Stony Point, Village of West Haverstraw, Village of Haverstraw, Town of Haverstraw and Town of Clarkstown.

Copies of the resolutions of the municipal legislative bodies granting these consents are attached hereto as Exhibit A (the “Resolutions”). It may be noted that a number of the consents, obtained before the conversion of CHPEI into CHPE LLC, make reference CHPEI rather than CHPE LLC (and some of these also do not reference Properties). As the legal successor to CHPEI, CHPE LLC has established a co-tenancy with Properties regarding all rights and privileges conferred by the Resolutions pursuant to an Assignment and Assumption Agreement, attached hereto as Exhibit B.

Certificate Holders are in the process of obtaining a municipal consent from the Town of Bethlehem and two revocable consents from NYC. Based on recent precedent, the Commission need not wait for Certificate Holders to receive all requisite consents to commence review of this Verified Petition.¹⁶ On November 5, 2020, New York Transco LLC filed a petition (the “Transco Petition”) for a Certificate of Public Convenience and Necessity (“CPCN”) to allow the exercise of rights and privileges granted under certain municipal road crossing agreements associated with development of the Knickerbocker to Pleasant Valley transmission upgrade project. In the Transco Petition, petitioner stated that it was still in the process of obtaining 5 of 11 road crossing

¹⁶ See Case 20-E-0551: *Petition of New York Transco LLC for an Expedited Order Granting it a Certificate of Public Convenience and Necessity*, Order Granting Certificate of Public Convenience and Necessity and Confirming Lightened Regulation (February 23, 2021).

agreements, which would be filed upon receipt.¹⁷ Despite not having obtained all requisite municipal consents, the proceeding continued with a public statement hearing being held and a ruling on process issued. After issuance of the ruling on process, petitioner filed the remaining RUAs and a One-Commissioner Order granting a CPCN was issued four days later. Here, Certificate Holders are awaiting consents from only 2 municipalities. Accordingly, the Commission can reasonably commence review of the instant Petition, including holding a public statement hearing and ruling on process, prior to submission of remaining municipal consents.

Consistent with the municipal consents issued, it is anticipated that an RUA for each affected municipality will be completed pre-construction and will be filed with the Commission when available. It is anticipated that the executed RUAs will all substantially conform to the version attached hereto as Exhibit C.

II. PETITION FOR CPCN

A. Standard for Issuance of CPCN

Pursuant to PSL § 68, “[n]o gas corporation or electric corporation shall begin construction of a gas plant or electric plant without first having obtained the permission and approval of the commission.”¹⁸ In its treatment of PSL electric corporations obtaining Certificates pursuant to PSL Article VII for merchant transmission projects, the Commission has narrowed the scope of PSL § 68. As stated by the Commission, issuance of the Article VII Certificate “supplants the requirement for construction approval under PSL §68, but not the requirements for [Commission]

¹⁷ Transco Petition, at 8.

¹⁸ PSL § 68 (1).

approval of its corporate formation and the exercise of any municipal right, privilege or franchise.”¹⁹

The remaining applicable provisions PSL § 68 state that “[n]o such corporation shall exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised...without first having obtained a certificate of public convenience and necessity issued by the commission.”²⁰ In making its determination, the Commission addresses the qualifications of the applicant and the question of whether issuance of a certificate is in the public interest.

Typically, the Commission approves franchises in the form of RUAs. As explained below, however, the Resolutions themselves perfect the franchise afforded by §11 of the TCL.

TCL electric corporations (“TECs”) enjoy certain special corporate rights and privileges. The rights and privileges conferred by TCL section 11 are deemed by the PSC to be “franchises” pursuant to PSL § 68, the exercise of which is lawful only when and if approved by the Commission.

TCL §11(3) reads as follows, in pertinent part:

An electric corporation...shall have power to generate, acquire and supply electricity for heat or power in cities, towns, and villages within this state, and to light the streets, highways and public places thereof, and the public and private buildings therein; and to make, sell or lease all machines, instruments, apparatus and other equipments [sic] therefor [i.e., the generation, acquisition, or supply of electricity], and for transmitting and distributing electricity, to lay, erect and construct suitable wires or other conductors, with the necessary pipes or other fixtures in, on, over and under the streets, avenues, public parks and places in such cities, towns or villages, with the consent of the municipal authorities thereof, and

¹⁹ Case 10-E-0339: *Petition of Hudson Transmission Partners, LLC for an Original Certificate of Public Convenience and Necessity and for an Order Providing for Lightened Regulation*, Order Providing For Lightened Rate Making Regulation (April 14, 2011), at 6 (“Hudson Transmission Order”).

²⁰ *Id.*

in such manner and such reasonable regulations, as they may prescribe. (emphasis supplied)

Case law confirms that the municipal power to condition or “regulate” pursuant to the consent is limited. Reasonableness is required and an outright denial of consent is not authorized.²¹

The two ensuing sub-subsections of subsection 3 address the rights of TECs and other TCL entities with respect to types of real property. Sub-section 3-b deals with public property and reads, in pertinent part, as follows:

The construction, use and maintenance by an electric corporation of transmission, distribution and service lines and wires in, over or under any street, highway or public place... as may be necessary for its corporate purposes, are hereby declared to be public uses and purposes. (emphasis supplied)

Sub-subsection 3-a deals with private property and grants to these entities the power of eminent domain.

B. Required Findings for Project Under PSL § 68

For the reasons set forth below, Certificate Holders’ request for a CPCN satisfies the applicable provisions of PSL § 68 (1) and the Commission’s regulations.

i. Evidence/Documents Under Commission’s Regulations

1. General Matters (16 NYCRR Part 17)

As required by 16 NYCRR § 17.1, an affidavit verifying the contents of the petition is attached to this petition as Exhibit D. As required by 16 NYCRR § 17.2, Certificate Holders’ formation documents are attached hereto as Exhibits E and F.

²¹ Long Island Lighting Company v. Simonson, 272 AD2d 943 (2d Dept. 1947), *aff’d* 298 N.Y. 569 (1948); Consolidated Edison v. Hoffman, 54 AD2d 761 (2d Dept. 1976); *See, also*: People ex rel. Village of South Glens Falls v. Public Service Commission, 225 NY 216 (1919).

2. Requirements for All Applications Under PSL § 68 (16 NYCRR § 21.2)

In conformance with 16 NYCRR § 21.2(a), Certificate Holders state that the following utilities provide retail and wholesale electric sales in the territories in which the Project will be located: Niagara Mohawk, New York State Electric and Gas, Orange and Rockland Utilities, Central Hudson Electric and Gas, and Consolidated Edison Company of New York.²² Although the Project traverses several utility service territories, it will not provide retail electric service to any utility customer within those territories. The Project in all areas other than the Borough of Queens consists of dedicated and fully controllable HVDC transmission cables. In this regard, it should be noted that the Certificate Holders have filed a petition with the Commission in Case 10-T-0139 seeking approval to add an additional converter station in New Scotland, New York, which, upon approval, will transport renewable generation from upstate New York to the Interconnection Point.

The municipal consent of the Town of Bethlehem and the NYC revocable consents will be submitted as soon as they become available. The verifications of Certificate Holders' President and Secretary required by 16 N.Y.C.R.R §§ 17.1 and 21.2(b) and PSL § 68.1 are attached hereto as Exhibit G.

Certificate Holders have not previously received any authority from the Commission to exercise powers under any prior franchise or municipal consent within the meaning of 16 NYCRR § 21.2(c).

In conformance with 16 NYCRR § 21.2(d), Certificate Holders have received the following federal permits, licenses, and authorities:

²² The aquatic route of the Project in Lake Champlain also passes within the boundary of the Village of Rouses point, a municipal electric utility.

Federal Energy Regulatory Commission

On May 29, 2020, the Federal Energy Regulatory Commission (“FERC”) reaffirmed its 2010 determination to grant authority to sell transmission rights at negotiated rates to the Certificate Holders (Docket No. ER20-1214-000).

Department of Energy

A Presidential Permit issued by the U.S. Department of Energy (“DOE”) is required in order to construct, operate, maintain, and connect electric transmission facilities at the United States international border with Canada. Before a Presidential Permit is issued, the action must be found to be consistent with public interest and supported by an evaluation of environmental impacts, as well as by confirmation that electric reliability will be maintained. In addition, concurrences are required from the following agencies:

- US Department of State (“USDOS”);
- US Department of Defense (“USDOD”);
- US Fish and Wildlife Service (“USFWS”) and National Oceanic and Atmospheric Administration (“NOAA”) (pursuant to ESA Section 7); and
- NY State Historic Preservation Office (“NYSHPO”)(pursuant to NHPA Section 106).

The Project’s original Presidential Permit was issued in 2014 after the completion of a Final Environmental Impact Statement and was reissued on July 21, 2020, to accommodate the corporate restructuring that involved the conversion of CHPEI to CHPE LLC. The Permit was amended on April 30, 2021, to accommodate route modifications and a 250 MW uprate. All concurrences conducted by USDOS, USDOD, USFWS, NOAA and NYSHPO were also reaffirmed as appropriate in the context of the DOE permit.

Army Corps of Engineers Authorizations

Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act require that permits must be obtained from USACE in order to construct any structure in or over navigable waters, or to place or excavate any dredge or fill material in U.S. waters. Thus, Certificate Holders applied to the U.S. Army Corps of Engineers (“USACE”) for these permits and obtained them (in one consolidated form) in 2015. Certain modifications thereafter were made in order to:

- extend certain milestone dates in the original permit;
- update the permit due to the corporate reorganization; and
- update the permit to reflect route modifications and add a 250 MW uprate.

As required by USACE, a Navigational Risk Assessment for CHPE was completed and filed with USACE and the U.S. Coast Guard. This assessment was a multi-year process involving significant public input from stakeholders interested in these waterways. It confirmed that CHPE can be constructed and operated with no significant impact to navigation.

ii. Additional Information Required

With respect to subsections of 16 NYCRR § 21.3, Certificate Holders note that:

- (a) A description of the population of the territories in which Certificate Holders propose to exercise authority granted by a franchise or consent is attached hereto as Exhibit H. Project construction, as defined by Condition 9 of the Certificate, is expected to begin in 2022.
- (b) A detailed description of the plant to be constructed, and its estimated costs, is provided in the Article VII Application and proceeding (Case 10-T-0139).
- (c) As discussed below, the cost of constructing the Project will be financed through a combination of equity and debt.
- (d) Certificate Holders are not proposing to provide services for which retail rates would be charged, making this section inapplicable.

- (e) The estimated revenues to be derived from the Project will generally be derived from a Firm Electric Transmission Rights Purchase Agreement with Hydro-Quebec. Certificate Holders do not propose to provide service to residential, commercial, or industrial customers in any territory. Therefore, the latter half of this provision is inapplicable.
- (f) *See* Section II.B.3 for information responsive to this provision.
- (g) Certificate Holders are not proposing to provide services in this manner; these provisions regarding the availability of other services in this territory are inapplicable. Moreover, public need was previously determined in the Article VII proceeding culminating in issuance of the Certificate.

iii. **Evidence Relating to Economic Feasibility of Entity and Entity's Ability to Finance Improvements**

Section 68 requires the PSC to consider “the economic feasibility of the corporation, and the corporation’s ability to finance improvements of . . . an electric plant.” Preliminarily, Certificate Holders note that the “the economic feasibility” and “ability to finance” requirements were meant to apply to monopoly utilities, whose unwise financial decisions were historically passed on to ratepayers, and not to merchant transmission owners who must compete in the marketplace and who bear their own economic risks. The Legislature’s decision to amend PSL § 68 in 2013 to require additional scrutiny of a utility’s financial fitness was intended to ensure that utilities awarded franchises as the sole retail provider (or one of limited number of providers) have the resources necessary to respond to storms and outages expeditiously and otherwise fulfill their obligations to their customers.²³ These changes arguably were not intended to address merchant

²³ PSL § 68 was amended in 2013 to add a number of new requirements for CPCN holders to demonstrate financial fitness to provide certain services to New York electric consumers. These amendments authorize the Commission to engage in additional scrutiny of a public utility’s internal organization and financial condition in situations where that utility obtains a franchise agreement under which it will serve as the only, or one of a limited number of, retail provider(s) available in a given area. In response to Hurricane Sandy and utility response, the 2013 legislation was

transmission siting, since the consequences of a certified project failing to compete effectively will fall on the Facility's owners and shareholders, obviating the need for Commission oversight. Regardless, the Certificate Holders, with equity provided by Blackstone, have sufficient resources regarding economic feasibility for construction of the Project as well as an ability to finance improvements.

To build the Project, the Certificate Holders will secure all the capital needed throughout the Project's construction phase. This capital will be provided through a combination of debt and equity financing. The debt will be provided via construction loans sourced from a consortium of lenders, including investment and project finance banks. The required equity will be provided by Blackstone, the majority-owner of TDI and one of the world's leading investment firms with \$649 billion of assets under management as of March 31, 2021.²⁴

PSL § 68(1) requires the Commission to consider the Certificate Holders' ability to render safe, adequate, and reliable service. To the extent this standard applies to a merchant transmission owner, and as referenced in Section I.A. of this Petition, the management team responsible for the Project has significant experience in developing merchant transmission projects.

enacted to expand the PSC's authority to impose sanctions and revoke a CPCN for a utility's service territory "based on findings of repeated violations . . . that demonstrate a failure of such corporation to continue to provide safe and adequate service." PSL 68(2). See 2013 Sess. Law News of NY Ch. 57 (S.2607-D) (Approved March 29, 2013). Given the Commission's longstanding preference for a lightened regulatory regime for competitive market participants who do not have captive ratepayers to fall back on, it does not appear that the additional financial oversight requirements in the amended Section 68 were intended to apply to competitive providers who must compete in the marketplace, and who bear their own risks in that marketplace. This is similar to other provisions of the Public Service Law that have been deemed inapplicable to merchant providers. For those reasons, Certificate Holders believe the level of detail provided in this Verified Petition is appropriate and proportional to the regulatory oversight of competitive market participants which the Commission prefers.

²⁴ Since the Project's inception, no credit issues or rating downgrade events have occurred for Blackstone or the Certificate Holders and their affiliates. Blackstone's credit ratings from S&P and Fitch have remained stable since ratings on Blackstone were initiated in 2009. In 2013, Blackstone's S&P credit rating was raised to "A+" from "A" on strong growth and sound financial performance. Blackstone does not have any current or recent credit issues or credit ratings downgrades to report.

Even under a lightened regulatory regime, merchant energy projects remain subject to the PSL with respect to matters such as enforcement, investigation, safety, reliability, and system improvement, and with other requirements of PSL Articles 1 and 4, to the extent discussed in previous lightened regulation Orders. Included among these requirements are the obligations to conduct tests for stray voltage on all publicly accessible electric facilities and to report personal injury accidents pursuant to 16 NYCRR Part 125. Certificate Holders also remain subject to the conditions that are set forth in, and imposed by, the Certificate.

In addition, as the Commission stated in the CHPE Lightened Regulation Order, PSL Article 1 applies to Certificate Holders because they meet the definition of an electric corporation under PSL §2(13) and, when the authorized transmission facility commences operation, it will be engaged in the transmission of electricity under PSL §5(1)(b). Certificate Holders are therefore subject to provisions such as PSL §§11, 19, 24, 25 and 26, which prevent PSL electric corporations from taking actions that are contrary to the public interest.

The “just and reasonable rates” factor is inapplicable to the Project, which is a merchant transmission facility that will not be selling electricity at wholesale or retail. Nevertheless, the rates for transmission services charged by Certificate Holders are subject to FERC review and oversight pursuant to the Federal Power Act.

PSL § 68 also requires that the Commission determine whether issuance of a certificate is in the public interest. As required by PSL § 126, the Commission has already determined, through its issuance of the Certificate, that the public interest standard has been met by the Project.

III. CONCLUSION

For the reasons set forth herein, Certificate Holders respectfully request that the Commission grant a CPCN for construction, ownership, and operation of the Project and to exercise rights and privileges granted under various municipal consents.

Respectfully submitted,

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