

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Champlain VT, LLC

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Docket No. ER14-____-000

**APPLICATION FOR AUTHORITY TO SELL
TRANSMISSION RIGHTS AT NEGOTIATED RATES**

Pursuant to section 205 of the Federal Power Act (“FPA”), 16 U.S.C. § 824d (2013), and Part 35 of the regulations of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. Part 35 (2013), Champlain VT, LLC, d/b/a TDI New England (“TDI-NE” or “Applicant”) respectfully requests authority to sell transmission rights at negotiated rates (“Application”) on an approximately 150-mile High-Voltage Direct Current (“HVDC”) 1,000 megawatt (“MW”) transmission project identified as the New England Clean Power Link (the “Project”).¹ The Project will originate at a converter station located in Quebec, Canada, and consists of two submarine or underground cable systems that will terminate at a new converter station near or in Ludlow, Vermont. The converter station will connect with the transmission system of the Vermont Electric Power Company (“VELCO”) at a 345 kilovolt (“kV”) substation owned by VELCO. The Project will directly interconnect markets in Quebec and ISO-NE. Upon completion of the transmission line, TDI-NE will

¹ Information about the New England Clean Power Link (“NECPL”) can be found at www.necplink.com.

turn over operational control of the Project to ISO-NE, which will operate the line pursuant to its Open Access Transmission Tariff (“OATT”). TDI-NE anticipates that the Project will be operational in 2019.

TDI-NE also requests that the Commission: (1) grant certain waivers of the Commission’s regulations and reporting requirements; (2) approve TDI-NE’s framework for conducting an open solicitation process; and (3) approve this Application by March 10, 2014 to enable TDI-NE to meet its schedule for the permitting of, and the open solicitation process for, the Project.

I. COMMUNICATIONS

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II. DESCRIPTION OF THE APPLICANT

TDI-NE is a limited liability company organized and existing pursuant to the laws of Delaware with its principal place of business at 600 Broadway, Albany, New York, 12207. TDI-NE 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.² TDI-NE is owned by Champlain VT, Ltd., which is indirectly wholly-owned by investment funds controlled by The Blackstone Group LP (“Blackstone”).

A. Champlain VT Ltd.

Champlain VT Ltd. is a Cayman Islands limited liability company with its principal place of business at Champlain VT Ltd., c/o Blackstone, 345 Park Avenue, New York, NY 10154. Champlain VT Ltd. is a subsidiary of Blackstone and was established for the purpose of owning TDI-NE. Champlain VT Ltd. does not own or operate any existing electric generation, transmission, or distribution facilities.

B. Blackstone

Blackstone is one of the world’s leading alternative asset management firms. As of September 30, 2013, Blackstone had total assets under management

² Through the common control of Blackstone, TDI-NE is affiliated with the Champlain Hudson Power Express (“CHPE”) project, which is a 1,000 MW transmission line that will, upon completion in 2017, be under the operational control of the New York Independent System Operator (“NYISO”). As originally proposed, the CHPE project would include a transmission segment into ISO-NE; however, the ISO-NE segment of the CHPE line is no longer under consideration and will not be developed. Therefore, the CHPE project will not be a participant in the ISO-NE market.

of approximately \$248 billion. Combining Blackstone's 76 portfolio companies translates to an aggregate \$108 billion of revenues. Blackstone is expected to commit approximately \$275 million in equity financing for the Project and will fund all development expenses. Blackstone does not own or control any existing electric generation, transmission, or distribution facilities in the markets operated by ISO-NE or Hydro-Québec TransÉnergie ("HQT").

III. PROJECT OVERVIEW

A. Description of the Project Facilities

The Project is a 1,000-MW HVDC electric transmission system connecting Canada and the United States. The HVDC transmission system primarily consists of two six-inch, solid-state HVDC electric cables connecting the converter stations in each country. Each HVDC converter station will, in turn, be connected to a nearby ("HVAC") substation by a double circuit HVAC interconnection.

As currently proposed, the Project will originate at a converter station in Quebec, Canada that will be determined in consultation with HQT. Approximately 100 miles of the 150 mile transmission line will be buried in Lake Champlain using low-impact installation techniques. The remaining 50 miles of the transmission line will be buried underground along existing rights-of-way ("ROW") before terminating at the proposed location of a new converter station site in Ludlow, Vermont. The proposed converter station will connect to a 345

kV substation owned by VELCO.³ The final route is subject to ongoing evaluations and analysis.

The approximately 150-mile-long section of the Project located within the United States will be owned by TDI-NE and will be under the operational control of ISO-NE. The estimated total capital cost of the project is \$1.2 billion.

B. Description of Project Activities to Date

TDI-NE has completed an engineering pre-feasibility study as well as a market analysis to assess the commercial opportunities available to the Project's potential customers. TDI-NE also has filed interconnection applications with ISO-NE and HQT. Additionally, TDI-NE has retained engineering and environmental consultants to assist in the prosecution of necessary permits. TDI-NE is continuing its outreach efforts with resource agencies, non-governmental organizations, and interested stakeholders to facilitate the design, siting, and permitting of the Project. TDI-NE's public outreach will continue throughout the permitting process.

IV. REQUEST FOR NEGOTIATED RATES

The Commission has established a four-factor analysis to evaluate merchant transmission owners' requests for negotiated rate authority.⁴ Under this four factor analysis, merchant transmission owners must demonstrate that: (1)

³ The interconnection site will be informed by the currently pending interconnection request at ISO-NE and associated studies.

⁴ *Lake Erie CleanPower Connector*, 144 FERC ¶ 61,203 at P 6 (2013).

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.⁵

Additionally, the Commission recently issued a Final Policy Statement clarifying its policies governing the allocation of capacity for new merchant transmission projects.⁶ Pursuant to the Policy Statement, the Commission will allow, subject to certain conditions, a merchant transmission developer to select a subset of customers, based on not unduly discriminatory or preferential criteria, with whom it will negotiate the sale of transmission rights for the project's entire capacity.⁷ This policy will allow a developer to allocate 100 percent of a transmission project's capacity to a single customer, including an affiliate, provided the developer has fulfilled certain obligations.⁸

⁵ *Id.*

⁶ *Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects*, 142 FERC ¶ 61,038 (2013) (hereinafter, Policy Statement). The Policy Statement notes that "each merchant transmission project has unique project-specific characteristics that warrant providing such developers flexibility in negotiating risk-sharing and other details." *Id.* at P 19.

⁷ *Id.* at P 1. Prior to the Policy Statement, the Commission had allowed a merchant transmission developer to only subscribe up to 75% of a transmission project's capacity to anchor customers. *Id.* at P 5. See *Champlain Hudson Power Express, Inc.*, 132 FERC ¶ 61,006 (2010).

⁸ Policy Statement at P 8. The Policy Statement clarifies that "the Commission will also allow capacity allocation to affiliates, when done in a transparent manner with the transparency protections adopted in this final policy statement, so that other interested parties can voice concern if they believe the affiliate was treated preferentially at the expense of another party."

Specifically, a merchant developer must engage in an open solicitation of interest for its transmission project.⁹ This requires broad notice to potentially interested customers, including publication of information about the project in trade magazines and energy publications, through email distribution, and communications with regional planning groups.¹⁰ Information in the notice must identify or describe the project's capacity, points of interconnection, projected construction and in-service dates, the type of line, precedent agreement terms and conditions (if developed), and capacity allocation arrangements.¹¹ Further, the notice must specify the criteria that the merchant transmission developer will use to select customers, including objective criteria that the developer may employ to rank prospective customers provided such criteria can be justified.¹² Finally, the Commission expects merchant developers to maintain a website (or other communication venue) through which developers can provide time-stamped updates of any material changes to the project or the capacity allocation process.¹³

After broad notice has been provided, and a subset of customers has been selected, the Commission will allow developers to engage in bilateral negotiations with each potential customer regarding specific rates, terms, and conditions for

⁹ *Id.* at P 23.

¹⁰ *Id.*

¹¹ *Id.* at P 24; *see also Lake Erie CleanPower Connector*, 144 FERC at P 15.

¹² Policy Statement at P 25-26. These criteria could include credit ratings, first-mover status, and willingness to risk-share.

¹³ *Id.* at P. 27.

procuring transmission capacity.¹⁴ As part of these negotiations, the Commission will allow a merchant transmission developer to make distinctions among prospective customers based on transparent and not unduly or preferential criteria; as noted above, such negotiations could result in the award of a 100 percent of a transmission line's capacity to a single customer.¹⁵ The Commission's new policy acknowledges the: (1) "relationship between transmission developer and transmission customer will inherently resemble that of a joint venture;" and (2) "risk-sharing inherent in the relationship between the transmission developer and its customers."¹⁶

As discussed below, TDI-NE's proposal satisfies all four factors of the Commission's analysis, including the requirements of the Policy Statement.

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.¹⁷ 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. The Commission will

¹⁴ *Id.* at P 28.

¹⁵ *Id.* As the Commission notes, the Policy Statement would allow developers to offer "first mover" customers more favorable rates, terms, and conditions than later customers.

¹⁶ *Id.* at P 20.

¹⁷ *Lake Erie CleanPower Connector*, 144 FERC at P 9.

also 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 barriers to entry among competitors; and whether the merchant transmission owner would have any incentive to withhold capacity.¹⁸

TDI-NE will assume all market risks for the Project and will not seek recovery of the costs of the Project from ratepayers in New England under the ISO-NE tariff. Additionally, since there will be no captive customers, no entity will be required to purchase transmission service from TDI-NE, nor will TDI-NE be able to pass on any of the costs associated with the Project to captive customers.¹⁹ Further, TDI-NE is a new market entrant that does not own or operate any existing facilities in ISO-NE, and no affiliate of TDI-NE owns or operates facilities in this market.²⁰

When the transmission line is completed, TDI-NE will turn over operational control of the line to ISO-NE, which will operate the line under its OATT. This will prevent TDI-NE from acquiring market power or controlling

¹⁸ *Id.*

¹⁹ NECPL is not a “public policy” transmission line contemplated under Order No. 1000 and is not seeking cost recovery through ISO-NE’s implementation of Order No. 1000.

²⁰ Although TDI-NE is affiliated with the CHPE Project, neither the CHPE Project nor NECPL will be able to create barriers to entry or exercise market power in their respective markets since both parties have committed to turn operational control of their lines over to their respective ISOs. See *Hudson Transmission Partners, LLC*, 135 FERC ¶ 61,104, at P 19 (2011) (granting a merchant transmission provider negotiated rate authority in NYISO despite the fact that an affiliate owned a merchant transmission line in PJM in part because turning operational control over to an RTO/ISO “ensures that [a merchant transmission provider] cannot create barriers to entry or exercise market power in the relevant markets.”)

barriers to entry in the ISO-NE market. Another disciplining force on the negotiated rates is the cost of expansion of neighboring utilities. Incumbent transmission owners have an obligation under the ISO-NE OATT to expand their transmission capacity, upon request, at cost-based rates.²¹ Thus, no entity will purchase transmission service from TDI-NE unless it is cost-effective to do so when compared to the incumbent transmission owners' cost of expanding capacity.²² In addition, the Commission has recognized that negotiated rates for service over merchant transmission lines are effectively capped at the differential in power prices between markets, in this case the markets operated in Canada and ISO-NE.²³ Finally, the anchor customers likely to subscribe to the Project are sophisticated utilities that would only secure transmission service at competitive rates. For all of these reasons, TDI-NE's negotiated rates would be just and reasonable.

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) commit to turn over operational control of the

²¹ See Section II.31.4 of ISO-NE OATT (ISO New England, Inc., FERC Electric Tariff, § II.31.4). See also *Northeast Utils. Serv. Co.*, 127 FERC ¶ 61,179 at P 27 (2009) (utilities that have 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.").

²² *Chinook Power Transmission, LLC, Zephyr Power Transmission, LLC*, 126 FERC ¶ 61,134 at P 57 (2009) (hereinafter, *Chinook*).

²³ *Lake Erie CleanPower Connector*, 144 FERC at P 13.

merchant transmission facilities to a regional transmission organization (“RTO”) or independent system operator (“ISO”); and (2) engage in either a formal open season or an open solicitation process consistent with the Policy Statement, and file the results with the Commission.²⁴ Compliance with the Policy Statement’s requirements will ensure that the second and third factor of the Commission’s negotiated rate authority have been addressed, namely that new transmission capacity has been allocated in a not unduly discriminatory or preferential manner.²⁵

TDI-NE commits to turn over operational control of the Project to ISO-NE and to conduct an open solicitation process consistent with the requirements of the Policy Statement. To ensure that its open solicitation process is “not unduly discriminatory or preferential,” TDI-NE will retain a third-party independent adviser, experienced in overseeing open seasons for merchant transmission capacity, to facilitate broad notice of the Project and the selection and ranking of prospective customers.

As the Commission has noted, “merchant transmission developers have inherent incentives to solicit interest widely in a potential project.”²⁶ To initiate the open solicitation process, TDI-NE anticipates issuing a press release that will be circulated to energy trade publications, news outlets within the ISO-NE/HQT

²⁴ *Id.* at P 14; *see also* Chinook at P 40; Policy Statement at P 16.

²⁵ *Lake Erie CleanPower Connector*, 144 FERC at P 7.

²⁶ Policy Statement at P 19.

region, and a list of potential transmission customers that will be developed by TDI-NE in consultation with its independent adviser. Concurrent with the distribution of the press release, TDI-NE's webpage devoted exclusively to the open solicitation process will go "live." Both the website and the press release will identify the Project's capacity of up to 1,000 MW, the interconnection points in HQT and ISO-NE, anticipated dates for significant development and construction milestones, the characteristics of the line (*e.g.*, underground and underwater HVDC), a statement regarding allocation of capacity, and the criteria that TDI-NE will utilize to assess potential customers (*e.g.*, creditworthiness, term of transmission service).²⁷

The press release will identify the website address for TDI-NE's open solicitation process and the website will contain more detailed information about the Project. The website information will include Project activities completed to date, a confidentiality agreement, additional details regarding selection and ranking criteria (including justifications for each criteria), a form of precedent agreement (when available), and information about dates and locations of public meetings where TDI-NE will address inquiries from potential customers. TDI-NE anticipates holding one public meeting in Canada and one public meeting in

²⁷ With regard to allocation of capacity, TDI-NE intends to maximize the size of the line; however, the ultimate size of the line and allocation of the line's capacity will depend on a number of considerations including, but not limited to: level of customer interest; commercial considerations (*e.g.*, creditworthiness of interested customers); interconnection capacity constraints; and HVDC technology and supplier constraints.

the United States. Any material changes to the project status or the open solicitation process will be posted (and time-stamped) on TDI-NE's website and distributed through an email list-serv.²⁸

Once customer agreements have been executed, TDI-NE 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. As described in more detail in Section V of the Application, TDI-NE will then seek Commission approval of its open solicitation process. To that end, TDI-NE file with the Commission (pursuant to FPA section 205) the results of its capacity allocation process, and will demonstrate that its open solicitation process and execution of contractual agreements were conducted in a manner consistent with the policies described in the Commission's open access policies and its Policy Statement on Allocation of Capacity on New Merchant Transmission Projects.²⁹

In addition to the commitments made concerning the open solicitation process, TDI-NE 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 regulations³⁰ and will be subject to examination as required in Part 41 of the regulations; (2) file financial statements and reports in accordance with Part

²⁸ Policy Statement at P 27.

²⁹ *Id.* at P 30.

³⁰ 18 C.F.R. Part 101.

141.14 and 141.15 of the Commission's regulations;³¹ and (3) employ an independent auditor to audit its books and records.³²

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 conducts an open solicitation process consistent with the Policy Statement. Further, transmission rights secured on a merchant transmission line after an open solicitation process must be transacted in the secondary market according to the tariff of the RTO or ISO operating the line.³³

None of TDI-NE's affiliates owns or operates electric facilities in ISO-NE or HQT and the Project will not interconnect with any existing facilities owned by an affiliate of Applicant. Applicant does not anticipate that any transmission customer initially allocated transmission rights through the open solicitation process will be affiliated with TDI-NE. In the event that an affiliate purchases transmission rights through the open solicitation process, the facts and circumstances surrounding this allocation of capacity will be documented in the filing that TDI-NE will make to the Commission (discussed *infra* in Section V.) Consequently, there will be no opportunity for affiliate abuse.

³¹ 18 C.F.R. Part 41.

³² 18 C.F.R. Part 141.

³³ Chinook at P 58.

To prevent any undue discrimination from occurring, TDI-NE will turn over operational control of its facilities to ISO-NE. TDI-NE 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.

4. Regional Reliability and Operational Efficiency

To facilitate regional reliability and enhance operational efficiencies, the Commission expects merchant transmission developers to turn over operational control of their transmission facilities to an RTO or ISO.³⁴ Merchant transmission facilities also must comply with all mandatory reliability requirements. As noted above, TDI-NE commits to turn over operational control of the project to ISO-NE and will comply with all applicable reliability requirements. In addition, TDI-NE will -- consistent with the requirements of Order No. 1000 -- provide to ISO-NE all required information necessary to inform its regional planning process.³⁵

V. COMMITMENT TO MAKE A SUBSEQUENT COMPLIANCE FILING

At the completion of the open solicitation process, TDI-NE commits to make a subsequent section 205 filing with the Commission to disclose the results

³⁴ *Lake Erie CleanPower Connector*, 144 FERC at P 26.

³⁵ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, 136 FERC ¶ 61,051 at P 164-65 (2011), *order on reh’g*, 139 FERC ¶ 61,132 (2012), *appeal pending South Carolina Pub. Serv. Auth. v. FERC, et al* No. 12-1232 (D.C. Cir. filed 5/25/2012 and later).

of its capacity allocation process and to seek Commission approval of that process.³⁶ TDI-NE's filing will explain its solicitation process with sufficient detail to demonstrate its capacity allocation was consistent with the Policy Statement and the Commission's open access policies. At a minimum, TDI-NE will provide the following information:³⁷

- (1) The actions TDI-NE took to provide broad notice, including information about the Project and the customer evaluation criteria that were relayed in the broad notice and provided on the TDI-NE website;
- (2) Identity of parties that expressed interest in the Project, placed bids for project capacity, and/or purchased capacity; and the capacity amounts, terms, and prices involved in that interest, bid, or purchase;
- (3) Basis for TDI-NE's decision to prorate, or not to prorate, capacity, if a proposed project is oversubscribed;
- (4) Basis for TDI-NE's decision not to increase capacity for the Project if it is oversubscribed (including details regarding the economic, technical, or financial infeasibility that is the basis for declining to increase capacity);

³⁶ The Policy Statement allows developers to seek approval of its capacity allocation process after having completed the process of selecting customers in accordance with Commission policies. Policy Statement at P 31; *see also Lake Erie CleanPower Connector*, 144 FERC at P 17.

³⁷ Policy Statement at P 30.

- (5) TDI-NE's justification for offering more favorable rates, terms, and conditions to certain customers, such as "first movers" or those willing to take on greater project risk-sharing;
- (6) Criteria used by TDI-NE for distinguishing customers and the method used for evaluating bids, including information about how potential transmission customers were evaluated and compared to other transmission customers;³⁸ and
- (7) TDI-NE's rationale for selecting and rejecting specific customers, including any rates, terms or conditions of agreements unique to individual customers that led to their selection.

VI. REQUEST FOR WAIVERS

TDI-NE respectfully requests a waiver of certain regulatory requirements applicable to public utilities. Upon completion of the Project, TDI-NE 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."³⁹ Because TDI-NE does not tender for filing with this application a

³⁸ This will include information about how TDI-NE identified those customers with which it engaged in bilateral negotiations, as well as TDI-NE's rationale for the ultimate award of transmission capacity to specific customers.

³⁹ *Multitrade Limited Partnership*, 63 FERC ¶ 161,252 at 62,692 (1993). In *Multitrade*, the Commission explained that "if an entity chooses to consent to FPA jurisdiction at a date earlier

proposed tariff or rate schedule and does not yet provide transmission service, Commission action on this application will not, *per se*, make TDI-NE a public utility under *Multitrade*. However, TDI-NE respectfully requests that the Commission grant at this time the waivers discussed below, which will become effective when TDI-NE becomes a public utility.

In particular, TDI-NE requests waiver of: (1) the full reporting requirements of Subparts B and C of Part 35 of the Commission's regulations (except for Sections 35.12(a), 35.13(b), 35.15, and 35.16); and (2) Part 141, with the exception of sections 141.14 and 141.15. The Commission has granted similar waiver requests to other merchant transmission owners seeking negotiated rate authority.⁴⁰ Additionally, TDI-NE respectfully requests waiver of any other part of the Commission's regulations as necessary to the grant the authorizations requested herein.

VII. CONCLUSION


WHEREFORE, for all of the reasons stated herein, TDI-NE respectfully requests that the Commission grant its request for: (1) authority to sell transmission rights at negotiated rates, subject to the Commission's approval of a subsequent section 205 filing; and (2) certain waivers of the Commission's

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.*

⁴⁰ *Chinook* at P 68-69; *Rock Island Clean Line LLC*, 139 FERC ¶ 61,142 at P 43-47 (2012); *Neptune Regional Transmission System, LLC*, 139 FERC ¶ 61,110 at P 12 (2012).

regulations. TDI-NE also respectfully requests that the Commission issue an order on this Application on or before March 10, 2014.

Respectfully submitted,



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January 8, 2014

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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

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