

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 8704

Petition of Champlain VT, LLC d/b/a TDI New England)
for a certificate of public good, pursuant to 30 V.S.A.)
§ 231, to own and operate a high voltage direct current)
electric transmission line with a capacity of 1,000 MW, a)
converter station, and other associated facilities, to be)
located in Lake Champlain and in the Counties of Grand)
Isle, Chittenden, Addison, Rutland, and Windsor,)
Vermont, known as the New England Clean Power Link)
Project)

Order entered: 4/14/2016

ORDER GRANTING CERTIFICATE OF PUBLIC GOOD (“CPG”) PURSUANT TO 30 V.S.A. § 231

I. INTRODUCTION

On January 27, 2016, Champlain VT, LLC d/b/a TDI New England (“TDI-NE” or “Petitioner”) filed a petition (“Petition”) with the Vermont Public Service Board (“Board”) for a CPG, pursuant to 30 V.S.A. § 231 (“Section 231”), to own and operate in Vermont a high-voltage direct-current (“HVDC”) electric transmission line with a capacity of 1,000 MW, a converter station, and other associated facilities, known as the New England Clean Power Link (“NECPL” or “Project”).

In today’s Order, we approve the Petition, grant a CPG pursuant to 30 V.S.A. § 231, and grant intervention to Vermont Electric Power Company, Inc. and Vermont Transco LLC (together known as “VELCO”).

II. BACKGROUND AND PROCEDURAL HISTORY

On January 5, 2016, we issued a Final Order and CPG in Docket Number 8400, approving, pursuant to 30 V.S.A. § 248 (“Section 248”), the installation and operation by TDI-

NE of the NECPL.¹ In our Order, we found that the NECPL, which will be located within the Vermont portion of Lake Champlain and in the counties of Grand Isle, Chittenden, Addison, Rutland, and Windsor, Vermont, will promote the general good of the State, subject to certain conditions.

On January 27, 2016, TDI-NE filed its Petition for a CPG under 30 V.S.A. § 231 to own and operate the NECPL.

On February 8, 2016, the Vermont Department of Public Service (“Department”) filed a recommendation in support of approval of the Petition.

On February 17, 2016, VELCO filed a motion to intervene in this proceeding and a memorandum of law in support of its motion.

On February 18, 2016, TDI-NE filed a letter noting the Department’s recommendation and requesting that the Board grant a CPG as soon as possible.

No other filings were received by the Board.

No party has objected to Board consideration of any submissions made in this docket. Therefore, we hereby admit the following items as evidence in this proceeding:

1. Petition of TDI-NE for a Certificate of Public Good pursuant to 30 V.S.A. § 231.
2. Affidavit of Donald Jessome on behalf of TDI-NE.
3. Exhibits TDINE-1 through TDINE-8.
4. Federal Energy Regulatory Commission (“FERC”) Order Conditionally Authorizing Proposal and Granting Waiver, Docket No. ER14-966-000, 3/10/14 (*Champlain VT, LLC*, 146 F.E.R.C. ¶ 61,167 (2014)).
5. Letter from Sheila Grace, Esq., Special Counsel for the Department, filed February 8, 2016.
6. Letter from Andrew N. Raubvogel, Esq., Counsel for the Petitioner, filed February 18, 2016.

1. *Petition of Champlain VT, LLC, d/b/a TDI New England*, Docket 8400, Order of 1/15/16.

III. COMMENTS

Department

The Department filed comments recommending that the Board grant TDI-NE a CPG with *de minimis* financial regulation and that the Petition be approved without hearing or further investigation. In support of its recommendation, the Department cites the following statements to which Donald Jessome, the general manager of TDI-NE, attested in his affidavit: (1) TDI-NE is a private merchant company and as such is subject to regulation by FERC under the Federal Power Act;² (2) FERC has conditionally authorized TDI-NE to sell transmission rights on the Project at negotiated rates; (3) ISO New England (“ISO-NE”) will operate the transmission line pursuant to ISO-NE’s FERC-approved open access transmission tariff (“OATT”); (4) TDI-NE is subject to FERC approval of filing requirements under Section 205 of the Federal Power Act³ and TDI-NE’s submission of a rate schedule for service under the ISO-NE OATT; (5) TDI-NE will be required by FERC to comply with various financial monitoring conditions, including filing quarterly reports of its transactions and abiding by FERC standards of conduct; (6) TDI-NE will not enter into contracts with or sell directly to retail customers; (7) in the event that the Project is funded through a regional cost-sharing mechanism, TDI-NE will indemnify Vermont’s share of regionally allocated costs; (8) Blackstone Group, L.P. (“Blackstone”) has contributed \$16.4 million thus far toward project development activities and is expected to commit 100% of the equity financing for construction of the Project; (9) TDI-NE is in good standing and authorized to do business in Vermont; and (10) the Project will be constructed, operated, and maintained by qualified contractors and consultants under the oversight of TDI-NE’s engineering team.

Petitioner

TDI-NE filed a letter on February 18, 2016, informing the Board that it had provided a copy of its Petition to each party to the NECPL Section 248 proceeding and noting the

2. Federal Power Act of 1920, 16 U.S.C. § 791a et seq.

3. Federal Power Act of 1920 § 205, 16 U.S.C. § 824d (2015) (Section 205 requires public utilities to file the rates, terms, and conditions for interstate electricity transmission and wholesale electricity sales with FERC).

Department's recommendation for approval of the Petition and for *de minimis* financial regulation. TDI-NE further noted that only VELCO has filed for intervenor status and that VELCO authorized TDI-NE to report that VELCO does not intend to file comments on the Petition and will defer to the discretion of the Board on the merits of the Petition and whether to hold a hearing.

IV. VELCO MOTION TO INTERVENE

Motion

VELCO seeks intervention as of right pursuant to Board Rule 2.209(A), stating that TDI-NE plans to rely on, in part, the expertise of third parties, including VELCO, to operate and maintain the Project and that TDI-NE intends to cede operational control to ISO-NE. VELCO maintains, however, that physical control of the Project may be assigned to a qualified third party, such as VELCO, and that TDI-NE intends to rely on a third-party maintenance agreement, with VELCO as the Project's preferred maintenance vendor. VELCO further maintains that it has a particular interest in protecting the Vermont electric ratepayer benefits VELCO negotiated in its agreement with TDI-NE in Docket No. 8400 and that, since the Project likely will result in VELCO building transmission system upgrades that TDI-NE would pay for, VELCO also has an interest in the Board's inquiry into TDI-NE's financial stability and its ability to obtain project financing. VELCO argues that no other party shares VELCO's unique relationship with TDI-NE, given the physical transmission system connection and potential contractual relationship between the two companies. Consequently, VELCO contends that no other party could represent VELCO's interests.

VELCO argues that, in the alternative, the Board should grant VELCO permissive intervention because VELCO meets the requirements of Board Rule 2.209(B), and its intervention will not delay the proceeding or prejudice the interests of existing parties or the public. VELCO further contends that its participation will assist the Board in determining whether TDI-NE satisfies the requirements of 30 V.S.A. § 231.

Legal Standard

Board Rule 2.209 governs intervention in proceedings before the Board. Rule 2.209(A) provides that, upon timely application, a person shall be entitled to intervene in a proceeding in three circumstances:

- (1) when a statute confers an unconditional right to intervene;
- (2) when a statute confers a conditional right to intervene and the condition or conditions are satisfied; or
- (3) when the applicant demonstrates a substantial interest which may be adversely affected by the outcome of the proceeding, where the proceeding affords the exclusive means by which the applicant can protect that interest, and where the applicant's interest is not adequately represented by existing parties.

In addition, Rule 2.209(B) reserves to the Board the power to grant intervenor status on a permissive basis when an applicant "demonstrates a substantial interest which may be affected by the outcome of the proceeding." In exercising the discretionary authority reserved in Rule 2.209, the Board considers three factors:

- (1) whether the applicant's interest will be adequately protected by other parties;
- (2) whether alternative means exist by which the applicant's interest can be protected; and
- (3) whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public.

Rule 2.209(C) further provides that the Board may impose certain restrictions on an intervenor's participation in a proceeding. Specifically, the Board may restrict such party's participation to only those issues in which the party has demonstrated an interest; may require such party to join with other parties with respect to appearance by counsel, presentation of evidence, or other matters; or may otherwise limit such party's participation, all as the interests of justice and the economy of adjudication require.

Conclusion

We conclude that VELCO meets the requirements for permissive intervention pursuant to Board Rule 2.209(B). VELCO's stated interests concerning the operation and maintenance of

TDI-NE's transmission project are integral to the substance of this Petition. We therefore grant VELCO's motion to intervene, limited to the interests identified therein.

V. FINDINGS

Project Description

1. TDI-NE is a limited liability company organized and existing pursuant to the laws of Delaware with a principal place of business at 600 Broadway, Albany, New York, 12207.

TDI-NE is authorized to do business in Vermont and is in good standing. Petition at 2, 3; Jessome aff. at ¶ 4; exhs. TDINE-2, TDINE-3.

2. TDI-NE is a special purpose entity created for the purpose of developing and financing the NECPL and is an affiliate of TDI-USA Holdings Corporation ("TDI"). TDI and TDI-NE are both wholly owned indirectly by Blackstone, a publicly traded global investment and advisory firm with more than \$330 billion currently under management, as of September 30, 2015.

Petition at 2; Jessome aff. at ¶¶ 5, 7; exh. TDINE-4.

3. TDI-NE currently holds a Section 248 CPG to install and operate the NECPL under 30 V.S.A. § 248. Docket 8400, Order of 1/5/16.

4. On March 10, 2014, FERC issued an order conditionally authorizing TDI-NE to sell transmission rights associated with the Project at negotiated rates. Pursuant to this order, TDI-NE has committed to turn over operational control of the transmission line to ISO-NE, which will operate the NECPL under ISO-NE's FERC-approved OATT. Jessome aff. at ¶¶ 92, 93; exh. TDINE-1.

5. FERC's grant of authority to TDI-NE is subject to FERC's approval of a subsequent filing under Section 205 of the Federal Power Act and TDI-NE's submission of a rate schedule for service under the ISO-NE OATT. Under the FERC order, TDI-NE will be required to comply with various financial monitoring conditions, including filing electronic quarterly reports of its transactions and abiding by FERC standards of conduct. Jessome aff. at ¶ 94; exh. TDINE-1.

6. The NECPL is a proposed electric transmission line that will run from the Canadian border to Ludlow, Vermont, along underwater and underground routes. The electricity shipped through the NECPL will be generated by renewable energy sources in Canada and elsewhere and

will be delivered to the New England electric grid through an interconnection point in Vermont. The transmission line will utilize HVDC technology and will be capable of transmitting 1,000 MW of electricity. Docket No. 8400, Order of 1/5/16 at 7.

7. Construction and operation of the NECPL will have significant economic, environmental, and electric system benefits for the State of Vermont and the New England region. Docket No. 8400, Order of 1/5/16 at 93.

8. The NECPL has an expected lifespan of 40 years. Jessome aff. at ¶ 71.

Technical Competence

9. TDI-NE has sufficient technical expertise to construct, own, operate, and maintain the NECPL and to ensure that the facility will be reliably and efficiently maintained. Petition at 6; Jessome aff. at ¶ 14; exhs. TDINE-5, TDINE-6.

10. TDI and TDI-NE have developed a streamlined business approach utilizing a small number of company employees with specific business expertise and then hiring consultants to supplement this knowledge within specialized areas, such as project design, civil engineering, and environmental permitting. Jessome aff. at ¶ 17.

11. TDI-NE's leadership team is made up primarily of individuals employed by TDI-NE's affiliate, TDI. These individuals, together with a number of specialized experts, make up the team that has designed and evaluated the NECPL for potential impacts under the Section 248 review criteria. The NECPL will be constructed, operated, and maintained by qualified contractors and consultants under the oversight of TDI-NE's engineering team. Jessome aff. at ¶¶ 18-27, 66-76; exhs. TDINE-5, TDINE-6, TDINE-7.

12. TDI-NE's leadership has substantial experience in the field of electric transmission and HVDC transmission project development, and the team is knowledgeable about power markets in New England. Each member of the TDI-NE team brings specialized knowledge and expertise in discrete areas. Petition at 6; Jessome aff. at ¶¶ 15, 19; exhs. TDINE-5, TDINE-6.

13. In addition to the leadership team that is overseeing the Project, TDI-NE has hired expert consultants in a variety of disciplines to design the Project and to thoroughly evaluate the Project as proposed. During construction, operation, and maintenance of the NECPL, TDI-NE

will continue to hire qualified contractors and consultants who will be supervised by TDI-NE's engineering team, headed by Eugene Martin, president and chief operating officer of TDI, and Robert Harrison, vice president of engineering and construction of TDI. Jessome aff. at ¶¶ 17, 22, 26, 27; exh. TDINE-7.

14. TDI has experience developing and permitting large-scale buried and submerged HVDC projects of similar scale to the NECPL. In addition to the NECPL, TDI has proposed another buried HVDC project known as the Champlain Hudson Power Express ("CHPE") project, which is a proposed 1,000 MW transmission line that will run from the Canadian border to New York City. The NECPL leadership team is made up of the same TDI leadership team developing the CHPE project. Jessome aff. at ¶¶ 15, 28-30; exhs. TDINE-5, TDINE-6.

15. The NECPL will be constructed by qualified contractors and individuals under the oversight of TDI-NE's engineering team, which includes individuals who have previously overseen large-scale construction of electrical infrastructure and have the necessary experience to oversee the construction and installation of the NECPL. Jessome aff. at ¶ 66; exhs. TDINE-6, TDINE-7.

16. Through construction, TDI-NE will retain construction and environmental inspection teams to conduct on-site reviews and provide status reports to TDI-NE. This will ensure that the Project is being built to the manufacturer's standards, appropriate industry standards, and in accordance with TDI-NE's contractual and regulatory obligations. Jessome aff. at ¶ 70; exh. TDINE-7.

Facility Maintenance

17. With the exception of off-site system monitoring, the NECPL will be largely unmanned after construction. Controls will be automated, with remote operations managed by TDI-NE. The only aspect of the NECPL that will require regular maintenance will be the converter station in Ludlow, Vermont. Jessome aff. at ¶¶ 72, 74.

18. Under the agreement TDI-NE executed with VELCO on December 4, 2014, VELCO will be TDI-NE's preferred vendor for the operation and maintenance services agreement for the

Project, subject to negotiation and execution of a mutually agreeable contract. Jessome aff. at ¶ 76.

19. All inspections of, repairs to, and technical maintenance performed on Project equipment will be conducted by qualified technicians under a variety of operations and services agreements into which TDI-NE will enter. Petition at 6; exh. TDINE-7.

20. Scheduled maintenance for the equipment of the converter station will include annual testing of the system and periodic inspections of the cooling water pumps, transformers, and other technical equipment. These inspections will largely be carried out by the original equipment manufacturer (“OEM”), with which TDI-NE will have a warranty and long-term service agreement. The permanent stormwater features at the converter station will be inspected and maintained by environmental consultants as required by the applicable permits. TDI-NE will enter into an operations and maintenance services agreement that will include general upkeep of the converter station site. Jessome aff. at ¶¶ 75, 77; exh. TDINE-7.

21. The buried NECPL cables will be installed to meet specific design and field condition parameters and, therefore, will be virtually maintenance free. Although no components of the transmission system will require regular replacement, regular inspections in accordance with manufacturer specifications will be performed during scheduled outages to ensure that equipment integrity is maintained. Jessome aff. at ¶¶ 74, 80.

22. In the event of any unplanned maintenance or emergency repairs, TDI-NE will be alerted to any breach or fault through the fiber optic system that will monitor the NECPL’s status at all times. Should a cable fault necessitate repair, the system will automatically de-energize, and TDI-NE will arrange for a first-responder to make a site visit and confirm the need for repair or unplanned maintenance. The first-responder likely will be the same party with which TDI-NE will execute an operations and maintenance services agreement. Any necessary repair or unplanned maintenance activities will then be conducted by the OEM under the long-term service agreement or warranty, depending on the issue. Jessome aff. at ¶ 78.

23. TDI-NE will have appropriate maintenance and repair plans and equipment in place to deal with both regular maintenance and any unexpected repairs that may be necessary to ensure that the NECPL is efficiently operated for its full lifespan. These plans will be developed in

close consultation with the OEM, which will perform or oversee any technical maintenance and repairs. Jessome aff. at ¶ 79.

24. TDI-NE will secure warranties and guarantees from the cable and converter station manufacturer(s). Petition at 8; Jessome aff. at ¶ 64.

25. Before operation of the NECPL begins, an Emergency Repair and Response Plan (“Plan”) will be prepared to identify procedures and contractors necessary to perform maintenance and emergency repairs. The Plan will detail the activities, methods, and equipment involved in repair and maintenance work for the transmission system. This Plan will be prepared in conjunction with the appropriate contractors. Jessome aff. at ¶ 85.

26. TDI-NE will turn over operational control of the NECPL to ISO-NE and will comply with all applicable reliability requirements. FERC has found that TDI-NE has met its regional reliability and operational efficiency requirements, subject to TDI-NE’s continued participation in the necessary regional planning processes. Jessome aff. at ¶ 73; exh. TDINE-1.

27. ISO-NE will operate the transmission line pursuant to ISO-NE’s FERC-approved OATT. Jessome aff. at ¶ 93; exh. TDINE-1.

28. No entity on either end of the NECPL is required to purchase transmission service from TDI-NE, and customers will do so only if it is cost-effective. Jessome aff. at ¶ 96.

29. FERC has concluded that: (1) TDI-NE will bear all market risks that the NECPL will succeed or fail, based on whether a market exists for its services; and (2) TDI-NE has no ability to pass on any costs to captive ratepayers. Jessome aff. at ¶ 98.

30. TDI-NE will not enter into contracts with or sell directly to retail customers. Jessome aff. at ¶ 101.

Financial Soundness

31. TDI-NE is a financially stable entity that has and is able to secure sufficient financing to carry on its business activities and to support the Project. Jessome aff. at ¶ 51.

32. TDI-NE proposes the NECPL as a privately funded, merchant transmission project that will sell transmission rights at negotiated rates on the NECPL to electricity suppliers under an open solicitation process regulated by FERC. Jessome aff. at ¶¶ 56, 89.

33. TDI-NE does not intend to seek to recover the costs of the Project through charges paid by retail electric ratepayers. Rather, it will recoup its costs of construction and operation through the payments it will receive from power suppliers that contract with TDI-NE to utilize the NECPL transmission line. Jessome aff. at ¶ 56.

34. TDI-NE is a wholly owned subsidiary of Blackstone and is backed by the substantial funding available to Blackstone as the manager of more than \$330 billion in assets. Jessome aff. at ¶ 52.

35. As of October 2015, Blackstone had contributed \$16.4 million towards NECPL development activities (*e.g.*, studies, real estate transactions, permitting, etc.) and will continue to fund NECPL's development. Blackstone is expected to commit 100% of the equity financing for the construction of the Project. Petition at 8; Jessome aff. at ¶ 54.

36. In addition to Blackstone's equity financing, TDI-NE will seek debt financing for the NECPL from export credit agencies, commercial banks, and other credit providers. Based on the discussions TDI and TDI-NE have had to date with more than 15 banks, export credit agencies, and other credit providers, TDI-NE expects that the debt financing for the NECPL will be oversubscribed. Petition at 9; Jessome aff. at ¶ 55.

37. Even though TDI-NE plans to fund the NECPL as a merchant transmission facility, it has recognized that there is a potential that Project funding could shift to a regional cost-sharing mechanism such as that authorized by the "FERC Order 1000"⁴ process. In the event the NECPL is funded through a regional cost-sharing mechanism, TDI-NE will indemnify Vermont's share of regionally allocated costs and will not seek cost recovery for indemnification payments or any other cost-sharing mechanism that allocates costs to Vermont ratepayers. Jessome aff. at ¶¶ 58-60; exh. TDINE-8.

38. TDI-NE will obtain insurance for the construction and operation phases of the Project. This will include, but not be limited to, the following categories of insurance (or insurance of comparable coverage): (1) builder's all-risk insurance, covering construction through start of operation; (2) a completed operations policy, covering workmanship issues and other non-

4. Order No. 1000, *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, 136 FERC ¶ 61,051 (2011) (codified at 18 C.F.R. pt. 35).

equipment defects; (3) business interruption insurance; (4) other standard insurance policies, such as workers' compensation, commercial general liability and property damage insurance, and automotive liability insurance. Jessome aff. at ¶ 62.

39. In addition to these insurance policies obtained by TDI-NE as the owner of the Project, the general contractor selected for construction of the Project will maintain separate, but similar, insurance policies that will name TDI-NE as an "Additional Insured." The general contractor(s) also will be required to post performance and payment bonds (naming TDI-NE as obligee) from a pre-approved surety. Jessome aff. at ¶ 62.

40. TDI-NE anticipates that its project financing for the NECPL will have an investment-grade credit rating. Based on the parameters outlined by TDI's financial advisor on the CHPE project and utilized in the financial model for the NECPL, TDI-NE believes the Project will receive an investment-grade credit rating from S&P, Moody's, and/or Fitch. Petition at 8; Jessome aff. at ¶ 38.

Business Competence and Regulatory Compliance

41. The NECPL is subject to regulation by FERC under the Federal Power Act. Jessome aff. at ¶ 90.

42. TDI-NE received conditional authorization from FERC, by order dated March 10, 2014, to sell transmission rights at negotiated rates ("FERC Conditional Approval Order").⁵ Jessome aff. at ¶ 92; exh. TDINE-1.

43. Pursuant to its authority granted by FERC, TDI-NE will sell transmission rights to power generators and other suppliers/marketers. They, in turn, will sell the power that is transmitted via the NECPL to New England area utilities that will deliver the output to retail customers. Jessome aff. at ¶ 100; exh. TDINE-1.

44. TDI-NE has not yet entered into transmission service agreements ("TSAs") with any energy suppliers, but it anticipates entering into TSAs with suppliers of renewable energy, including hydroelectric or wind power. Jessome aff. at ¶ 36.

5. *Champlain VT, LLC*, 146 F.E.R.C. ¶ 61,167 (2014)

45. TDI-NE commenced its open solicitation process on October 15, 2015. Expressions of interest from seven suppliers representing up to a total of 3,200 MW were received on December 4, 2015. TDI-NE is now conducting confidential negotiations to secure TSAs with supplier(s). Jessome aff. at ¶ 36.

46. Once the TSAs are secured, TDI-NE will make a Section 205⁶ filing with FERC detailing the solicitation process and results. The solicited power could come from suppliers in Quebec Province or elsewhere in Canada or the United States. Jessome aff. at ¶ 39; exh. TDINE-1.

47. All major state permits necessary to build and operate the NECPL have been secured and all federal permits are expected to be obtained by the first half of 2016. Jessome aff. at ¶¶ 48, 49.

VI. DISCUSSION AND CONCLUSIONS

Petition for a CPG pursuant to Section 231

TDI-NE seeks a CPG to own and operate, with *de minimis* regulation, the NECPL, which consists of the high-voltage HVDC electric transmission line, converter station, and other associated facilities that were reviewed and approved pursuant to Section 248 in Board Docket 8400.

The Department recommends that the CPG be granted without investigation or hearing, and TDI-NE represents that it has conferred with VELCO and is authorized to report that VELCO defers to the discretion of the Board on the merits of the Petition and whether to hold a hearing.

The statutory standard for Board issuance of a CPG under Section 231 is whether the proposed ownership and operation of the business will promote the general good of the State.⁷ Toward that end, the Board has established the following set of criteria to be used as guidelines when determining whether an entity should be granted a CPG:

6. Section 205 of the Federal Power Act, 16 U.S.C. § 824d

7. 30 V.S.A. § 231.

1. Technical expertise;
2. Adequate service;
3. Facility maintenance;
4. Balance between customers and shareholders;
5. Financial stability;
6. Company's ability to obtain financing;
7. Business regulation; and
8. Relationship with customers.⁸

In past cases, the Board has treated these criteria as guidelines only, because the factors required to be considered in making a general good finding necessarily vary, depending on the specific circumstances in each case.⁹ Accordingly, in this case, we will exercise our regulatory authority over TDI-NE to reflect the limited activities TDI-NE plans to undertake in Vermont.¹⁰

TDI-NE represents that it will not enter into contracts with or sell directly to retail customers in Vermont. If the Project ultimately is funded through a regional cost-sharing mechanism, TDI-NE will indemnify Vermont's share of regionally allocated costs such that Vermont ratepayers will not bear any costs of the Project. As a result, our review in this proceeding has not focused on considering customer relations, the balance between customers and shareholders, or the adequacy of service to retail customers. Rather, our assessment has focused on TDI-NE's technical competence, including its ability to maintain the Project facilities, its financial soundness, and its business competence and regulatory compliance. Our findings are organized accordingly.

The evidence demonstrates that TDI-NE meets the criteria that are applicable to its ownership and operation of the Project. TDI-NE has substantial experience in the development of electric transmission projects and is knowledgeable about power markets in New England.¹¹ During the construction, operation, and maintenance of the NECPL, TDI-NE will hire qualified

8. See, *Petition of New England Power Company*, Docket 6039, Order of 6/29/98 at 17.

9. *Amended Petition of Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.*, Docket 7862, Order of 3/23/14 at 17.

10. *Id.*; see, also, *Joint Petition of Dalton Hydro, LLC to sell, and Ampersand Gilman Energy, LLC*, Docket 7478, Order of 12/4/08 at 7.

11. Findings 12, 14, and 15.

contractors and consultants who will be overseen by TDI-NE's engineering team.¹² With the exception of off-site system monitoring, the NECPL will be largely unmanned after construction, with automated controls and remote operations managed by TDI-NE.¹³ TDI-NE is a wholly owned subsidiary of Blackstone and is able to secure sufficient financing to support the Project.¹⁴ The NECPL will be a privately financed "merchant" transmission facility; therefore TDI-NE will not seek to recover the costs of the Project through charges paid by Vermont retail electric ratepayers.¹⁵ TDI-NE will sell transmission rights to power generators and other suppliers or marketers; it will not enter into contracts with, or sell directly to, retail customers.¹⁶

We conclude that TDI-NE has the technical, operational, and regulatory expertise and experience, as well as the financial stability and means required for a CPG.

Based on a review of the record, we conclude that, subject to the conditions set forth in full below, a CPG authorizing TDI-NE to own and operate the Project is in the general good of the State.

De minimis Regulation

TDI-NE has requested *de minimis* regulation of TDI-NE's financial activities pursuant to the Board's authority under 30 V.S.A. § 203 to exercise jurisdiction "so far as may be necessary" for the Board to perform its regulatory duties. Specifically, TDI-NE submits that the Board should assert jurisdiction over TDI-NE only with regard to matters contemplated in 30 V.S.A. §§ 107 and 109, concerning, respectively, the acquisition of a controlling interest in a company subject to Board jurisdiction or the sale or lease of property located within Vermont and used for transmission services. In effect, TDI-NE requests an exemption from regulation pursuant to 30 V.S.A. § 108, pertaining to prior Board approval of debt financing, including the mortgaging or pledging of corporate property or the issuance of stocks, bonds, notes, or other evidences of indebtedness.

12. Findings 13 and 15.

13. Finding 17.

14. Findings 2 and 34.

15. Findings 33 and 37.

16. Findings 32, 33, and 43.

TDI-NE submits that the Board should determine that, as a merchant entity and not a retail electric distribution utility, TDI-NE qualifies for *de minimis* regulation of corporate financing because TDI-NE will be subject to federal oversight of its NECPL operations and will not sell electricity to retail customers or recover Project costs from ratepayers. TDI-NE further maintains that, given the regulatory oversight of FERC and ISO-NE, it is not necessary for the Board to assert full financial regulatory review over TDI-NE or the NECPL.

TDI-NE argues that the Board should exercise its jurisdiction on a *de minimis* basis – that is, TDI-NE should not be required to make any filings with the Board pursuant to Section 108, because: (1) TDI-NE is not a retail distribution utility that will incur expenses to be passed on to ratepayers, and (2) TDI-NE’s transmission services via the NECPL will be federally regulated by FERC under its open solicitation process. Furthermore, TDI-NE maintains that it is not a traditional, retail distribution utility; rather, it is a competitive transmission services provider that will be selling transmission rights to sophisticated utilities pursuant to federally authorized negotiated rates, not to retail customers.

In the past, the Board has permitted certain companies subject to FERC jurisdiction to pursue corporate financing without prior Board approval.¹⁷ The circumstances here are similar, given FERC’s jurisdiction over TDI-NE’s authority to sell transmission rights on the NECPL. We conclude that prior Board approval of TDI-NE’s financing is not required.¹⁸ Accordingly, we have determined that the following requirements shall be included in TDI-NE’s Section 231 CPG:

- (1) Any amendments to TDI-NE’s authorization by FERC on March 10, 2014, in FERC Docket No. ER14-966-000, to sell transmission rights at negotiated rates shall be filed with the Board and the Department within 30 days of issuance by FERC;
- (2) TDI-NE shall notify the Board and the Department within 14 days of any changes in the ownership of TDI-USA Holdings Corporation (“TDI”),¹⁹ and

17. See, e.g., *Petition of USGen New England, Inc.*, Docket 7038, Order of 3/25/05.

18. Having reached this conclusion, there is no need for us to resolve the merits of TDI-NE’s claim that its corporate financings are not subject to Section 108 regulation.

19. We include this condition in light of the significant overlap in personnel between TDI-NE and TDI, as indicated by findings 10, 11, 13, and 14.

- (3) TDI-NE shall not transfer ownership of the New England Clean Power Link or of its certificate of public good without prior approval of the Board.

TDI-NE's request for *de minimis* regulation is granted as specified in this Order, subject to the further condition that such *de minimis* regulation: (1) remains consistent with the public good of the State, and (2) may be rescinded by the Board for good cause shown, following reasonable notice and an opportunity for hearing.

VII. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Service Board ("Board") of the State of Vermont that:

1. Pursuant to 30 V.S.A. § 231, a certificate of public good, subject to the conditions below, shall be issued to Champlain VT, LLC d/b/a TDI New England ("TDI-NE") for the ownership and operation of the New England Clean Power Link project ("Project") as described in the supporting affidavit and exhibits submitted with this Petition.
2. Any amendments to TDI-NE's authorization by the Federal Energy Regulatory Commission ("FERC") on March 10, 2014, in FERC Docket No. ER14-966-000, to sell transmission rights at negotiated rates shall be filed with the Board and the Vermont Department of Public Service ("Department") within 30 days of issuance by FERC.
3. TDI-NE shall be subject to *de minimis* regulation, in that TDI-NE shall not be required to obtain prior Board approval of financings pursuant to 30 V.S.A. § 108, provided that such *de minimis* regulation: (1) remains consistent with the public good of the State, and (2) may be rescinded by the Board for good cause shown, following reasonable notice and an opportunity for hearing.
4. TDI-NE shall notify the Board and the Department within 14 days of any changes in the ownership of TDI-USA Holdings Corporation ("TDI").
5. TDI-NE shall not transfer ownership of the New England Clean Power Link or of its certificate of public good without prior approval of the Board.

Dated at Montpelier, Vermont, this 14th day of April, 2016.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/Margaret Cheney</u>)	BOARD
)	
)	OF VERMONT
<u>s/Sarah Hofmann</u>)	

OFFICE OF THE CLERK

FILED: April 14, 2016

ATTEST: s/Judith C. Whitney
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@vermont.gov)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and Order.