STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Verified Petition of CHPE LLC and CHPE Properties, Inc. for Approval of Financing Pursuant to Public Service Law Section 69	Case 20-E-_____

VERIFIED PETITION OF CHPE LLC AND CHPE PROPERTIES, INC. FOR APPROVAL OF FINANCING PURSUANT TO PUBLIC SERVICE LAW SECTION 69

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I. INTRODUCTION

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., as co-holders, a Certificate of Environmental Compatibility and Public Need (the "Certificate") authorizing CHPEI and CHPE Properties, Inc., 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 though 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 CHPEI to CHPE LLC, and (3) CHPE Properties, Inc., would become a wholly-owned subsidiary

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[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).

of CHPE LLC.[2] The reorganization took place on August 28, 2020. For the purposes of this filing, "Certificate Holders" represents CHPE LLC and CHPE Properties, Inc.

Certificate Holders respectfully request that the Commission grant them flexible financing approval as lightly-regulated entities to enter into indebtedness of up to [redacted] through various financing instruments in order to raise capital, which will be primarily used to fund the construction of the Project.

Certificate Holders further request that the Commission expedite, to the extent possible, its review of this Petition and grant the authorizations requested herein so that the Certificate Holders will have sufficient time to close on their financing arrangements in 2021.

II. BACKGROUND

A. <u>The Parties</u>

CHPE LLC is a limited liability company organized and existing under the laws of the State of New York. CHPE LLC is a special purpose entity created for the purpose of constructing, owning, and operating the Project. CHPE Properties, Inc. is a transportation corporation organized and existing under the Transportation Corporations Law of the State of New York. Both entities are electric corporations subject to a lightened regulatory regime.[3]

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[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").

[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).

CHPE LLC is a wholly-owned subsidiary of TDI-USA Holdings LLC a/k/a Transmission Developers, Inc. ("TDI"), a development company majority-owned by the Blackstone Group. TDI develops unique energy transmission projects in an environmentally responsible manner using proven high-voltage direct current ("HVDC") cable technology to link trapped generation resources such as wind, hydro and other renewables with energy markets that are seeking renewable energy per State mandates. TDI's approach to HVDC avoids the visual impacts of overhead transmission by installing projects either underwater or underground. These buried lines increase the electric grid's safety and reliability, while providing hardened infrastructure that is less susceptible to damage from natural disasters.

B. The Champlain Hudson Power Express Project

On March 30, 2010, the Applicants submitted the original Certificate application (the "Original Application") and initiated a three-year process that culminated with the issuance of the Order granting the Certificate (the April 13 Order). The Applicants 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 that process leading to issuance of the April 13 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 an order granting a Certificate to Certificate Holders on April 18, 2013.[4]

[4] 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).

With respect to the Project's public benefits, the April 13 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 (the "State") and the City of New York ("NYC").[5] 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.[6] 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."[7] 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."[8]

Since the Certificate was issued, the need for urgent 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.[9] Four days later, on Earth Day, Mayor DeBlasio publicly announced that his administration had decided to supply 100% of the NYC governmental electricity demand with renewable hydropower transmitted from Canada to NYC.[10] Following the Mayor's remarks,

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[5] April 13 Order, at 100.

[6] *Id.*, at 97.

[7] *Id*., at 97.

[8] *Id*., at 52.

[9] 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.

[10] The relevant portion of the press release reads as follows: "The City government of New York City, in an average day, uses as much electricity as everybody in the state of Vermont. And within the next five years, we will convert all

Daniel Zarrilli, Director of OneNYC, stated that NYC expected to begin relying on Canadian hydropower within five years.[11] 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.[12] 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 a decade. The urgency that prompted these initiatives effectively mandates that financial close for the Project take place as soon as possible.

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."[13] "[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."[14]

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

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of our electricity that the City government uses to renewable sources. All of it will come from renewable energy. That electricity will come down to us – it's zero-emission electricity coming to us from Canada, from Quebec, hydropower that is being produced right now."

[11] https://www1.nyc.gov/office-of-the-mayor/news/211-19/transcript-mayor-de-blasio-new-york-city-s-green-new-deal

[12] https://www.governor.ny.gov/news/governor-cuomo-executes-nations-largest-offshore-wind-agreement-and-signs-historic-climate

[13] 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.

[14] *Id*.

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. The Proposed Financing Transaction

To support the construction of the Project, CHPE LLC will seek to raise debt financing in an amount not to exceed [redacted] The type of financing has not yet been determined, but may take the form of bank loans, bonds, or other financial instruments, as dictated by Project needs and market conditions.[15]

III. DISCUSSION

A. The Commission Should Take Prompt Regulatory Action to Approve the Proposed Financing Under a Reduced Level of Scrutiny.

Pursuant to PSL § 69, no gas or electric corporation "may issue stocks, bonds, notes or other evidences of indebtedness payable at periods of more than twelve months…" without an order from the Commission authorizing such issuance.[16] The Commission determined PSL § 69 applies to Certificate Holders but that "[a]ny required filings, however, will be reviewed with the extent of scrutiny reduced to the level that the public interest requires be applied upon review of their competitive operations."[17] According to the Commission, "[a]dditional scrutiny is not required to protect captive New York ratepayers, who cannot be harmed by the terms arrived at

[15] The details of the lender security program also have yet to be decided, but it may include a mortgage on the Project converter station site; an assignment of contracts, such as the Transmission Services Agreement and construction contracts; an assignment of options on real estate; UCC filings; and a pledge of the equity interest in CHPE LLC held by TDI.

[16] PSL § 69.

[17] CHPE Lightened Regulation Order, at 5-6.

for these financings because lightly-regulated participants in competitive markets bear the financial risk associated with their financial arrangements."[18] Under this reduced level of scrutiny, "prompt regulatory action [under PSL § 69] is possible through reliance on [Certificate Holders'] representations concerning proposed financing transactions."[19]

The Commission recently applied these principles to a petition filed by New York Transco LLC ("Transco") in Case 15-E-0743. In *Transco*, the Commission found that when lightly-regulated utilities propose financial transactions, "[the Commission] need not make an in-depth analysis of proposed financing transactions."[20] After conducting an analysis "appropriate under lightened regulation," the Commission approved Transco's financing plan because the plan was for a "statutory purpose and be consistent with the public interest."[21] The same is true for Certificate Holders' Project.

The Project is being "developed, financed, constructed, and operated on a merchant basis."[22] The Project is an HVDC cable that will transport contracted energy directly from Canada to a converter station in NYC. The Certificate Holders will not have any retail customers nor will they have any adverse effect on captive retail customers requiring the protection of the Commission's rate regulation.

As a result, the Commission does not need to undertake an in-depth analysis of the proposed financing transactions. Instead, by relying on the representations that the Certificate

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[18] CHPE Lightened Regulation Order, at 6.

[19] CHPE Lightened Regulation

[20] Case 15-E-0743, *Petition of New York Transco LLC for an Order Providing Lightened Regulation*, Order Providing for Lightened Rate Making Regulation and Approving Financing (April 21, 2016), at 11 (the "*Transco Order*").

[21] Transco Order, at 15.

[22] April 2013 Order, Certificate Condition 15(b).

Holders set forth in this Petition and the record in Case 10-T-0139, prompt regulatory action is possible and will be consistent with the public interest.

B. The Commission Should Grant Certificate Holders Flexibility with Respect to the Proposed Financing

In the *Transco Order*, based on the fact that Transco will be a regulated entity, the Commission granted it the "flexibility to modify, without our prior approval, the identity of the financing entities, payment terms, and the amount financed, so long as it does not exceed the maximum amount . . ."[23] As regulated entities, Certificate Holders respectfully request that the Commission afford them the same flexibility.

The Certificate Holders request that the Commission grant flexible financing authority so that Certificate Holders can raise the capital necessary for construction of the Project.

C. The Commission Should Find That Granting the Financing Authority Requested in This Petition is a Type 2 Action for Which No Further Action is Required Under the State Environmental Quality Review Act.

Under the Commission's regulations implementing the State Environmental Quality Review Act, the approval of issuances of securities is a Type 2 action for which no further environmental review of the financing is required under that statute.[24] A Short Environmental Assessment Form is included as Attachment 1.

[23] Transco Order, at 14.

[24] *See* 16 N.Y.C.R.R. §§7.2(a) and 7.2(b)(2)(v); *see also* Case 11-M-0483: Sithe/Independence Power Partners, L.P., *Order Approving Financing* (December 21, 2011), at fn 5.

IV. CONCLUSION

For the reasons set forth herein, Certificate Holders respectfully request that the Commission approve the proposed financing with flexibility to modify, without our prior approval, the identity of the financing entities, payment terms, and the amount financed.

/s/ ***Steven D. Wilson***

Steven D. Wilson
Young Sommer LLC

Attorneys for CHPE LLC and CHPE Properties, Inc.

Dated: November 20, 2020

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PUBLIC SERVICE COMMISSION

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VERIFICATION

STATE OF NEW YORK)
) ss.
COUNTY OF ALBANY)

I, William Stewart Helmer, being first duly sworn, attest that I am the Executive Vice President and General Counsel employed by the Petitioners and that I have authority to verify the foregoing Verified Petition. I have read the foregoing Verified Petition and I affirm the facts, representations, and statements set forth herein regarding Petitioners CHPE LLC and CHPE Properties, Inc. are true and correct to the best of my knowledge, information and belief.

William S. Helmer

By: William S. Helmer

Title: Executive Vice President and General Counsel

Sworn to before me this 20th day
of November, 2020

Tracie A. Chase
Notary Public

TRACIE A. CHASE
Notary Public, State of New York
Qualified in Albany Co. No. 01CH4989574
My Commission Expires 12/9/2021