

171 FERC ¶ 61,186
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick, Bernard L. McNamee,
and James P. Danly.

CHPE, LLC

Docket No. ER20-1214-000

ORDER GRANTING APPLICATION FOR AUTHORIZATION TO CHARGE
NEGOTIATED RATES, SUBJECT TO CONDITION, AND GRANTING WAIVERS

(Issued May 29, 2020)

1. On March 9, 2020, as amended on April 15, 2020, CHPE, LLC (CHPE) submitted a request for Commission authorization to charge negotiated rates for transmission rights on a proposed high-voltage direct current (HVDC) merchant transmission project, known as the Champlain Hudson Power Express (Project), which will originate at the United States-Canada border and terminate in New York City, New York.¹ In this order, we authorize CHPE to charge negotiated rates for transmission rights on the Project, subject to its submission of a compliance filing after its open solicitation, as discussed below. We also grant CHPE's request for waivers of certain Commission requirements.

I. Background

A. Applicant

2. CHPE states that it is a limited liability company organized under the laws of New York for the purpose of developing and financing the Project. CHPE states that it does not own or operate any existing electric generation, transmission, or distribution facilities.

3. CHPE states that it is owned by TDI-USA Holdings (TDI), a privately held corporation. CHPE states that TDI is a leading developer of HVDC transmission

¹ Under the Commission's precedent, merchant transmission projects differ from those of traditional public utilities in that the developers of merchant transmission projects assume the full market risk of a project and have no captive customers from which to recover the cost of the project. Thus, on a case-by-case basis, the Commission has allowed merchant transmission projects to be priced based on negotiated rates and has granted waivers of certain requirements. See, e.g., *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134 (2009) (*Chinook*).

systems, and TDI and its subsidiaries do not own or operate any existing generation, transmission, or distribution facilities in the United States.² CHPE explains that shareholders of TDI that own or control, individually or in aggregate with their affiliates, a 10% or greater interest in TDI's voting securities are (1) New York Clean Power Holdings, LLC (88%), an affiliate of The Blackstone Group Inc. (Blackstone); and (2) Transmission Developers, Inc. (12%).³ CHPE states that, while National Resources Energy, LLC (NRE) does not currently have an ownership interest in TDI, it is anticipated that NRE will obtain a minority interest in TDI later this year.⁴ CHPE states that, as a consequence, TDI will eventually be owned by Blackstone (approximately 85%), Transmission Developers, Inc. (approximately 12%), and NRE (approximately 3%).⁵

4. CHPE states that Blackstone is an alternative asset management firm with approximately \$571 billion in assets. CHPE states that Blackstone does not own or control any existing electric transmission or distribution facilities in the markets operated by the New York Independent System Operator, Inc. (NYISO) or Hydro-Québec, which is a major North American power generation and transmission company that is a body politic and corporate entity owned by the Province of Québec, Canada.⁶ CHPE states that through Blackstone's credit-oriented affiliate, GSO Capital Partners LP, Blackstone is affiliated with Altus Power America, Inc., which indirectly controls approximately two megawatts of solar photovoltaic projects in New York that sell their output through a New York state-regulated virtual net metering program.⁷ CHPE states that through the common control of Blackstone and TDI, CHPE is affiliated with the New England Clean Power Link (NECPL) project, which is a 1,000 MW HVDC transmission line that will, upon completion, be placed under the operational control of ISO New England Inc. (ISO-NE). CHPE states that TDI's affiliate, Champlain VT, LLC, has received Commission authorization to charge negotiated rates for transmission rights on the NECPL project.⁸

² CHPE Filing at 3.

³ *Id.*

⁴ CHPE Amended Filing at 1.

⁵ *Id.*

⁶ CHPE Filing at 4.

⁷ *Id.*

⁸ *Id.* at 4 n.1 (citing *Champlain VT, LLC*, 146 FERC ¶ 61,167 (2014)).

5. CHPE states that Transmission Developers, Inc., a Canada corporation, does not own or operate any existing generation, transmission, or distribution facilities in the United States and is not affiliated with a franchised public utility.⁹

6. CHPE states that NRE is a diversified clean energy development company and a wholly owned subsidiary of National Resources Group, a limited liability corporation organized under the laws of Connecticut. CHPE states that National Resources Group is a real estate development and investment firm that focuses on the redevelopment of corporate and industrial sites in an environmentally sustainable manner. CHPE states that NRE and National Resources Group (and their affiliates) do not own or operate any existing generation, transmission, or distribution facilities in the United States and are not affiliated with a franchised public utility.¹⁰

B. Project Description

7. CHPE states that the Project is a 1,000 MW merchant electric transmission system connecting Canada and the United States, consisting primarily of an HVDC electric transmission line connecting the converter stations in each country. CHPE states that each HVDC converter station will, in turn, be connected to a nearby high-voltage, alternating-current (HVAC) substation by a double-circuit HVAC interconnection.¹¹ CHPE states that the Project will originate at the United States-Canada border in the Town of Champlain, New York, near the Village of Rouses Point, where it will interconnect to the transmission system owned and operated by Hydro-Québec. CHPE states that the transmission line will extend approximately 330 miles south and will be buried underground or installed under water along its route. CHPE states that the transmission line will terminate at the converter station to be constructed at the Astoria Complex, in Queens, New York, where it will connect to the transmission system owned by Consolidated Edison Company of New York, Inc.¹²

8. CHPE states that it is currently studying the feasibility of expanding the Project's capacity by 250 MW for a total capacity of 1,250 MW. CHPE states that whether the transmission line is 1,000 MW or 1,250 MW, it commits to allocate transmission capacity on the line consistent with Commission policy and precedent.¹³ CHPE states that upon

⁹ *Id.* at 3.

¹⁰ *Id.*

¹¹ *Id.* at 4.

¹² *Id.* at 5.

¹³ *Id.* at 4.

completion of the transmission line, it will turn over operational control of the Project to NYISO, which will operate the line pursuant to NYISO's Open Access Transmission Tariff (OATT).¹⁴

C. Application

9. CHPE explains that, in 2010, the Commission authorized Champlain Hudson Power Express, Inc., to charge negotiated rates for transmission rights on the Project.¹⁵ CHPE states that it submits this new application to charge negotiated rates for transmission rights on the Project for three reasons: (1) CHPE is now an LLC and not a corporation; (2) the configuration of the Project has changed compared to the description in the prior application;¹⁶ and (3) CHPE proposes to sell 100% of the transmission rights of the Project at negotiated rates using an open solicitation process.¹⁷ CHPE states that the Commission's July 2010 order authorized presubscription of 75% of the transmission rights through bilateral negotiations with anchor customers and allocation of the remaining 25% through an open season process.¹⁸

10. CHPE also requests waiver of certain Commission regulations and reporting requirements, as discussed below.¹⁹ CHPE requests issuance of a Commission order on its application by May 29, 2020, which will allow CHPE to timely complete certain milestones for the Project.²⁰

¹⁴ *Id.* at 1.

¹⁵ *Id.* at 6 (citing *Champlain Hudson Power Express, Inc.*, 132 FERC ¶ 61,006 (2010) (July 2010 Order)).

¹⁶ CHPE states, for example, that the Project no longer includes a transmission segment into ISO-NE. *Id.* at 6.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 1, 17-19.

²⁰ *Id.* at 1, 19. With respect to the milestones for the Project, CHPE states that NYISO is evaluating the Project as part of NYISO's Class Year interconnection process. CHPE states that, upon completion of the Class Year process, which is anticipated to occur in the third quarter of 2020, it will need to accept its cost allocation for interconnection, which it estimates will be approximately \$170 million. CHPE also

II. Notice and Intervention

11. Notice of CHPE's March 9, 2020 filing was published in the *Federal Register*, 85 Fed. Reg. 14,936 (Mar. 16, 2020), with interventions and protests due on or before March 30, 2020. The City of New York, New York (New York City) filed a timely motion to intervene.

12. Notice of CHPE's April 15, 2020 amended filing was published in the *Federal Register*, 85 Fed. Reg. 22,423 (Apr. 22, 2020), with interventions and protests due on or before April 20, 2020. None was filed.

III. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the timely, unopposed motion to intervene serves to make New York City a party to this proceeding.

B. Negotiated Rate Authority

14. In the July 2010 Order, the Commission granted the request to charge negotiated rates for transmission service on the Project based on the specific circumstances at that time. Because those circumstances have changed, we will conduct a *de novo* analysis to determine whether the Project continues to meet the requirements for negotiated rate authority using the criteria set forth in the Commission's 2013 Policy Statement.²¹

15. In evaluating negotiated rate applications, the Commission employs a four-factor analysis, as outlined in *Chinook*, to examine: (1) the justness and reasonableness of the rates; (2) the potential for undue discrimination; (3) the potential for undue preference, including affiliate preference; and (4) regional reliability and operational efficiency requirements.²² This approach, which was further developed in the 2013 Policy

anticipates that it will complete closing for the financing of the Project at the end of 2020. CHPE states that, in order to timely complete these milestones, CHPE requires Commission authorization to charge negotiated rates for transmission rights on the Project. *Id.* at 19.

²¹ *Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects; Priority Rights to New Participant-Funded Transmission*, 142 FERC ¶ 61,038 (2013) (2013 Policy Statement).

²² *Chinook*, 126 FERC ¶ 61,134 at P 37.

Statement, simultaneously acknowledges the financing realities faced by merchant transmission developers, the mandates of the Federal Power Act (FPA), and the Commission's open access requirements. Moreover, this approach allows the Commission to use a consistent framework to evaluate requests for negotiated rate authority from a wide range of merchant transmission projects that can differ substantially from one project to the next.

1. Factor One: Just and Reasonable Rates

16. To approve negotiated rates for a transmission project, the Commission must find that the rates are just and reasonable.²³ In determining whether negotiated rates will be just and reasonable, the Commission considers whether the merchant transmission developer has assumed the full market risk for the cost of constructing its proposed project and is not building within the footprint of the developer's (or an affiliate's) traditionally-regulated system. In such a case, there are no captive customers who would be required to pay the costs of the project. The Commission also considers whether the developer or an affiliate already owns transmission facilities in the region where the project is to be located, what alternatives customers have, whether the developer is capable of erecting any barriers to entry among competitors, and whether the developer would have any incentive to withhold capacity.²⁴

a. CHPE's Proposal

17. CHPE represents that it has no captive customers and will assume all market risks for the Project.²⁵ CHPE states that no entity will be required to purchase transmission service from CHPE, which is a new market entrant that does not own or operate any existing transmission facilities in NYISO. CHPE states that, although it is affiliated with (1) small solar photovoltaic facilities of *de minimis* capacity selling their output pursuant to a state-regulated program in New York,²⁶ and (2) a proposed merchant transmission line in ISO-NE,²⁷ these affiliations do not result in the creation of barriers to entry or the potential for the exercise of market power.²⁸ First, CHPE states that it and its affiliates

²³ *Id.*; July 2010 Order, 132 FERC ¶ 61,006 at P 17.

²⁴ *Chinook*, 126 FERC ¶ 61,134 at P 38.

²⁵ CHPE Filing at 10.

²⁶ *See supra* P 4.

²⁷ *Id.*

²⁸ CHPE Filing at 10.

do not own or control any barriers to market entry or have an incentive to withhold transmission capacity, because the revenue to pay for the Project will result from the sale of transmission capacity from the Project. Second, CHPE states that it has committed to turn over operational control of the Project to NYISO, which will operate the line under NYISO's Commission-approved OATT. CHPE asserts that NYISO's operational control of the Project will prevent CHPE from acquiring market power or controlling barriers to entry in the NYISO market.²⁹

18. CHPE states that another disciplining force on the negotiated rates for the Project is the cost of expansion of neighboring utilities. CHPE notes that incumbent transmission owners have an obligation under NYISO's OATT to expand transmission capacity, upon request, at cost-based rates.³⁰ CHPE therefore argues that no entity will purchase transmission service from CHPE unless it is cost-effective to do so when compared to the incumbent transmission owners' cost of expanding capacity.³¹

b. Commission Determination

19. Based on the information provided in its request for negotiated rate authority, we find that CHPE's request for authorization to charge negotiated rates on the Project satisfies the first *Chinook* factor. CHPE bears full market risk for the Project³² and has no captive customers. CHPE and its affiliates do not own or operate transmission facilities in the same area served by the Project, which is the NYISO market. CHPE states that it is affiliated with: (1) approximately two megawatts of solar photovoltaic facilities, which sell their output pursuant to a state-regulated program in New York; and (2) a proposed merchant transmission line, the NECPL project located in the ISO-NE market, which has negotiated rate authority from the Commission.³³ We find that these

²⁹ *Id.* (citing *Hudson Transmission Partners, LLC*, 135 FERC ¶ 61,104, at P 19 (2011) (granting a merchant transmission provider negotiated rate authority in NYISO and stating that, while an affiliate of the provider owned a merchant transmission line in the PJM Interconnection, LLC (PJM), turning operational control of the provider's facilities over to an RTO/ISO "ensures that [a merchant transmission provider] cannot create barriers to entry or exercise market power in the relevant markets.")).

³⁰ *Id.* at 11 (citing NYISO OATT, § 3.3.4).

³¹ *Id.* at 11 (citing *Anbaric Development Partners, LLC*, 162 FERC ¶ 61,097, at P 15 (2018) (*Anbaric*); *Chinook*, 126 FERC ¶ 61,134 at P 57).

³² *Linden VFT, LLC*, 119 FERC ¶ 61,066, at P 17 (2007).

³³ *Champlain VT, LLC*, 146 FERC ¶ 61,167 (authorizing Champlain VT, LLC's request for negotiated rates for transmission rights on the NECPL project). We note that upon completion of the NECPL project, the transmission line will be placed under the

affiliations do not result in the creation of barriers to entry or the potential for the exercise of market power in the NYISO market.³⁴ Additionally, no entity is required to purchase transmission service from CHPE, and customers have the alternative of constructing their own generation tie lines or purchasing transmission from other transmission developers. Further, CHPE and its affiliates do not own or control any barriers to market entry or have any incentive to withhold capacity on the Project. After the Project is completed, CHPE will turn over operational control of the transmission line to NYISO, which will operate the line pursuant to NYISO's OATT. Accordingly, we find that CHPE's Project satisfies the first factor of our analysis that the negotiated rates will be just and reasonable.

2. **Factor Two: Undue Discrimination**

20. To prevent undue discrimination when granting merchant transmission owners negotiated rate authority, the Commission has considered: (1) the terms and conditions of a merchant transmission developer's open season; and (2) its tariff commitments (or in the case of an interconnection with a regional transmission organization (RTO) or an independent system operator (ISO), its commitment to turn over operational control to that regional entity).³⁵ The 2013 Policy Statement provides an alternative to conducting a formal open season, allowing a developer to demonstrate no undue discrimination or preference by conducting an open solicitation that complies with the requirements of the 2013 Policy Statement.³⁶ Specifically, the developer must: (1) broadly solicit interest in the project from potential customers; and (2) after the solicitation process, demonstrate to the Commission that it has satisfied the solicitation, selection, and negotiation process criteria set forth in the 2013 Policy Statement.³⁷

operational control of ISO-NE, which will operate the line pursuant to ISO-NE's OATT. *Id.* at P 9.

³⁴ *Hudson Transmission Partners, LLC*, 135 FERC ¶ 61,104, at P 19 (2011) (finding that the merchant transmission project has no ability to exercise market power or erect barriers to entry in the relevant markets where: (1) operational control of the project will be turned over to NYISO and the project will be operated pursuant to NYISO's OATT; and (2) operational control of an affiliated merchant transmission project has been turned over to PJM and that project is operated pursuant to PJM's OATT).

³⁵ *Chinook*, 126 FERC ¶ 61,134 at P 40.

³⁶ 2013 Policy Statement, 142 FERC ¶ 61,038 at PP 15, 23.

³⁷ *Id.* P 16.

21. In the 2013 Policy Statement, the Commission stated that applicants must issue broad notice of the project in a manner that ensures that all potential and interested customers are informed of the proposed project, such as by placing notice in trade magazines or regional energy publications.³⁸ Such notice should include developer points of contact, pertinent project dates, and sufficient technical specifications and contract information to inform interested customers of the nature of the project, including the following: (1) project size/capacity; (2) end points of the line; (3) projected construction and/or in-service dates; (4) type of line; (5) precedent agreement (if developed); and (6) other capacity allocation arrangements (including how the developer will address potential oversubscription of capacity).³⁹ The developer should also specify, in the notice, the criteria it plans to use to select transmission customers. In addition, the developer may also adopt a specific set of objective criteria it will use to rank prospective customers, provided it can justify why such criteria are appropriate. Finally, the Commission expects the developer to update its notice if there are any material changes to the nature of the project or the status of the capacity allocation process, in particular to ensure that interested entities are informed of any remaining available capacity.⁴⁰

22. Additionally, in the 2013 Policy Statement, the Commission stated that merchant transmission developers must disclose the results of their capacity allocation process. The merchant transmission developer's disclosure would be part of the Commission's approval of the capacity allocation process and thus noticed and acted upon under section 205 of the FPA.⁴¹ Developers must demonstrate that the processes that led to the identification of transmission customers and the execution of the relevant contractual arrangements are consistent with the 2013 Policy Statement and the Commission's open access principles. Specifically, the developer should describe the criteria that were used to select customers, any price terms, and any risk-sharing terms and conditions that served as the basis for identifying transmission customers selected versus those that were not, as well as provide certain information listed in the 2013 Policy Statement to provide transparency to the Commission and interested parties.⁴²

23. In the 2013 Policy Statement, the Commission emphasized that the information in the post-selection demonstration is an essential part of a merchant transmission developer's request for approval of a capacity allocation process, and that the developer

³⁸ *Id.* P 23.

³⁹ *Id.* P 20.

⁴⁰ *Id.* PP 24-27.

⁴¹ 16 U.S.C. § 824d (2018).

⁴² 2013 Policy Statement, 142 FERC ¶ 61,038 at P 30.

will have the burden to demonstrate that its process was in fact not unduly discriminatory or preferential, and resulted in rates, terms, and conditions that are just and reasonable.⁴³ The Commission allows developers discretion in the timing of requests for approval of capacity allocation processes. For example, a developer can seek approval of its capacity allocation approach after having completed the process of selecting customers in accordance with Commission policies. Alternatively, a developer can first seek approval of its capacity allocation approach, and then can demonstrate in a compliance filing filed in response to the Commission's order approving that approach that the developer's selection of customers was consistent with the approved selection process.

a. CHPE's Proposal

24. CHPE commits to turn over operational control of the Project to NYISO and to conduct an open solicitation consistent with the requirements of the 2013 Policy Statement. To ensure that its open solicitation is not unduly discriminatory or preferential, CHPE states that it will retain an experienced third-party independent expert to advise it on the open solicitation and capacity allocation process.⁴⁴

25. To initiate the open solicitation, CHPE states that it anticipates advertising in the trade press and issuing a press release that will be circulated to energy trade publications and news outlets within the NYISO and Québec regions, as well as to a list of potential transmission customers that will be developed by CHPE in consultation with its independent adviser. CHPE states that it also will activate a webpage dedicated exclusively to the open solicitation. CHPE explains that the website, advertisements, and press release will identify the Project's capacity, the interconnection points in NYISO and Québec, 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 CHPE will utilize to assess potential customers (e.g., creditworthiness and term of transmission service). CHPE explains that the press release and advertisements will identify the website address for CHPE's open solicitation, and the website will contain more detailed information about the Project. CHPE states that that the website information will include Project activities completed to date, a form of confidentiality agreement, additional details regarding selection and ranking criteria, including justifications for each criterion, and a form of precedent agreement, when it is available. CHPE states that any material changes to the Project's

⁴³ *Id.* P 32.

⁴⁴ CHPE Filing at 12.

status or the open solicitation process will be posted and time-stamped on CHPE's website and distributed by electronic mail, as required by the 2013 Policy Statement.⁴⁵

26. CHPE states that, once customer agreements have been executed, it will post on its website the winning bidder's name, the 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.⁴⁶ CHPE states that, at the completion of the open solicitation, it commits to make an FPA section 205 filing to seek Commission approval of its open solicitation. CHPE states that the filing will include 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 Commission's open access policies and the 2013 Policy Statement.⁴⁷

27. In addition to the commitments made concerning the open solicitation process, CHPE states that it will ensure that its books and records for the Project will comply with the Commission's Uniform System of Accounts, in Part 101 of the Commission's regulations,⁴⁸ and those books and records will be subject to the Commission's examination, as required by Part 41 of the Commission's regulations.⁴⁹ CHPE also commits to employ an independent auditor to audit its books and records for the Project.⁵⁰

b. Commission Determination

28. We find that CHPE's commitment to conduct an open solicitation and capacity allocation process is consistent with the requirements of the 2013 Policy Statement concerning the potential for undue discrimination. We will, however, reserve judgment on whether the open solicitation and capacity allocation process once implemented are not unduly discriminatory, pending CHPE making a compliance filing within 30 days of the close of its open solicitation process. To satisfy the second factor of the Commission's negotiated rate authority, the compliance filing should disclose the results of CHPE's capacity allocation process and describe relevant criteria, price terms, and any

⁴⁵ *Id.* at 12-13 (citing 2013 Policy Statement, 142 FERC ¶ 61,038 at P 27).

⁴⁶ *Id.* at 13.

⁴⁷ *Id.* at 13, 16-17 (citing 2013 Policy Statement, 142 FERC ¶ 61,038 at P 30).

⁴⁸ 18 C.F.R. pt. 101 (2019).

⁴⁹ *Id.* pt. 41.

⁵⁰ CHPE Filing at 14.

risk-sharing terms and conditions that were used as the basis for identifying the transmission customers selected, along with other information required by the 2013 Policy Statement to demonstrate that the process was not unduly discriminatory.

29. We also acknowledge CHPE's commitment that, consistent with *Chinook*, once the Project has commenced operation, CHPE will (1) ensure that the books and records for the Project will comply with the Uniform System of Accounts found in Part 101 of the Commission's regulations and will be subject to Commission examination as required in Part 41 of the Commission's regulations; and (2) employ an independent auditor to audit its books and records. These commitments will assist the Commission in carrying out its oversight role.

3. **Factor Three: Undue Preference and Affiliate Concerns**

30. In the context of merchant transmission, the Commission's concerns regarding the potential for affiliate abuse arise when the merchant transmission developer is affiliated with either the anchor customer, participants in the open season or solicitation, or customers that subsequently take service on the merchant transmission line. The Commission expects an affirmative showing that the affiliate is not afforded an undue preference, and the developer bears a high burden to demonstrate that the assignment of capacity to its affiliate and the corresponding treatment of nonaffiliated potential customers is just, reasonable, and not unduly discriminatory or preferential.⁵¹

a. **CHPE's Proposal**

31. With respect to this factor, CHPE states that its affiliates do not own or operate electric transmission facilities in NYISO or Québec. CHPE states that it has an affiliate that indirectly controls small solar photovoltaic facilities of *de minimis* capacity, which sell their output pursuant to a state-regulated program in New York. Further, CHPE states that the Project will not interconnect with any existing facilities owned by an affiliate.

32. CHPE explains that it does not anticipate that any of its affiliates will purchase transmission rights through the open solicitation, but if any do, the facts and circumstances surrounding the allocation will be documented in the compliance filing that CHPE will submit to the Commission after its open solicitation. CHPE therefore asserts that there will be no opportunity for affiliate abuse.⁵²

⁵¹ 2013 Policy Statement, 142 FERC ¶ 61,038 at P 34.

⁵² CHPE Filing at 14-15.

33. CHPE states that, to prevent undue preference from occurring, CHPE will turn over operational control of its facilities to NYISO. CHPE also states that it will file electric quarterly reports with the Commission 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,⁵³ to the extent any affiliate takes transmission service on the Project.⁵⁴

b. Commission Determination

34. We acknowledge CHPE's commitment that, if any affiliate is allocated capacity on the Project through the open solicitation, CHPE will present the facts and circumstances surrounding the allocation in the compliance filing that CHPE will submit to the Commission after its open solicitation. Under those circumstances, we would expect CHPE to detail the results and describe the process in sufficient detail to demonstrate that no affiliate has been given an undue preference, and likewise to show that the treatment of unaffiliated customers is just, reasonable, and not unduly preferential or discriminatory.

35. We also note CHPE's commitment that, to the extent any of CHPE's affiliates are allocated capacity on the Project, CHPE will (1) file electric quarterly reports of its transactions with the Commission; (2) comply with any applicable affiliate rules; and (3) be subject to the Commission's Standards of Conduct. These commitments help ensure that all transactions are transparent. In addition, we acknowledge CHPE's commitment to turn over operational control of its facilities to NYISO.

36. We accept these commitments as satisfying our concerns regarding the potential for affiliate abuse and undue preference, subject to the Commission's approval of CHPE's compliance filing that it will submit after its open solicitation. We will review this compliance filing to make a final determination as to whether or not the capacity allocation process was just, reasonable, and not unduly preferential or discriminatory.

4. Factor Four: Regional Reliability and Operational Efficiency

37. To ensure regional reliability and operational efficiency, the Commission requires that any merchant transmission developer whose project is connected to an RTO/ISO turn over operational control of its project to that regional entity. Merchant transmission projects, like cost-based transmission projects, are also subject to mandatory reliability

⁵³ 18 C.F.R pt. 358 (2019).

⁵⁴ CHPE Filing at 15 (citing *Anbaric*, 162 FERC ¶ 61,097 at P 28).

requirements.⁵⁵ Merchant transmission developers are required to comport with all applicable requirements of the North American Electric Reliability Corporation and any regional reliability council in which they are located.

a. CHPE's Proposal

38. CHPE commits to turn over operational control of the Project to NYISO and to comply with all applicable reliability requirements. In addition, CHPE states that it will provide to NYISO all required information necessary to inform NYISO's regional transmission planning process, consistent with the requirements of Order No. 1000.⁵⁶

b. Commission Determination

39. We acknowledge CHPE's commitment to turn over operational control of the Project to NYISO, comply with all applicable reliability requirements, and provide NYISO with all required information necessary for its regional transmission planning process pursuant to Order No. 1000. Accordingly, we find that CHPE's proposal meets these regional reliability and operational efficiency requirements, subject to CHPE's continuing participation in the necessary regional transmission planning processes.⁵⁷

⁵⁵ See, e.g., *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, 114 FERC ¶ 61,104, *order on reh'g*, Order No. 672-A, 114 FERC ¶ 61,328 (2006).

⁵⁶ CHPE Filing at 15-16 (citing *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051, at PP 164-65 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014)).

⁵⁷ Order No. 1000 requires merchant transmission developers to provide "adequate information and data to allow public utility transmission providers in the transmission planning region to assess the potential reliability and operational impacts of the merchant transmission developer's proposed transmission facilities on other systems in the region." Order No. 1000, 136 FERC ¶ 61,051 at P 164. See also *ISO New England Inc.*, 143 FERC ¶ 61,150, at P 70 (2013).

C. Request for Waivers

1. CHPE's Proposal

40. CHPE requests that the Commission grant waiver of certain filing and reporting regulatory requirements that will become effective when CHPE becomes a public utility.⁵⁸ CHPE states that the Commission has granted similar waiver requests to other merchant transmission developers seeking negotiated rate authority.⁵⁹ Specifically, CHPE requests waiver of: (1) the full reporting requirements of Subparts B and C of Part 35 of the Commission's regulations (except for sections 35.12(a), 35.13(b), 35.15, and 35.16); and (2) Part 141, including the FERC Form No. 1 filing requirement.⁶⁰ CHPE also requests waiver of any other part of the Commission's regulations as necessary to grant the authorizations requested in its filing.

2. Commission Determination

41. For good cause shown and consistent with our findings for other merchant transmission proposals, we grant waiver of the full reporting requirements of Subparts B and C of Part 35 of the Commission's regulations, except for the requirements of sections 35.12(a), 35.13(b), 35.15, and 35.16, as requested by CHPE.⁶¹

42. We also grant CHPE's request for waiver of Part 141, including the FERC Form No. 1 reporting requirement. The Commission has previously granted waiver of these requirements to other merchant transmission developers.⁶²

⁵⁸ CHPE Filing at 17-18. CHPE explains that, because it is not currently filing with this application a proposed tariff or rate schedule and does not yet provide transmission service, Commission action on the present filing will not *per se* make CHPE a public utility. *Id.* at 18 (citing *Multitrade Limited Partnership*, 63 FERC ¶ 61,252, at 62,692 (1993)).

⁵⁹ *Id.* at 18 (citing *Rock Island Clean Line, LLC*, 139 FERC ¶ 61,142, at PP 43-47 (2012); *Neptune Regional Transmission System, LLC*, 139 FERC ¶ 61,110, at P 12 (2012); *Chinook*, 126 FERC ¶ 61,134 at PP 68-69)).

⁶⁰ CHPE Amended Filing at 2; CHPE Filing at 18.

⁶¹ *See, e.g., Tres Amigas, LLC*, 153 FERC ¶ 61,287, at P 48 (2015); *Lucky Corridor, LLC*, 151 FERC ¶ 61,072, at P 47 (2015).

⁶² *See, e.g., Plains and Eastern Clean Line LLC*, 148 FERC ¶ 61,122, at P 35 (2014); *Lake Erie CleanPower Connector*, 144 ¶ 61,203, at P 31 (2013).

The Commission orders:

(A) CHPE is hereby granted authority to sell transmission rights on its proposed Project at negotiated rates, subject to its submission of a compliance filing after its open solicitation, as discussed in the body of this order.

(B) CHPE is hereby directed to file the compliance filing with the Commission within 30 days after the close of its open solicitation process, as discussed in the body of this order.

(C) CHPE is hereby granted waiver of the provisions of Subparts B and C of Part 35 of the Commission's regulations, with the exception of sections 35.12(a), 35.13(b), 35.15, and 35.16, and of Part 141 of the Commission's regulations, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.