

March 28, 2012

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Office of Electricity Delivery and Energy Reliability
Mail Code: OE-20
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585

**RE: Comments of Transmission Developers, Inc. on Request for
Information, Rapid Response Team for Transmission, OE Docket No.
RRTT-IR-01**

Transmission Developers, Inc. (TDI) appreciates the opportunity to submit the following comments on the Department of Energy's (DOE) recent Request for Information (RFI) in support of the Rapid Response Team for Transmission (RRTT) and its efforts to streamline the Federal permitting and review process for transmission projects.¹ TDI is the developer of Champlain Hudson Power Express (CHPE) project, a 1,000 MW high-voltage direct current (HVDC) transmission line that will allow consumers in the New York City region to access clean, low-cost electricity from wind and hydro resources. CHPE aligns well with the Administration's commitment to modernize the nation's power grid and develop clean energy sources, and is precisely the kind of project that the Administration has sought to facilitate through the RRTT.

¹ *Rapid Response Team for Transmission*, 77 Fed Reg. 11,517 (Feb. 27, 2012).

As explained below, TDI's project has involved extensive environmental review, regulatory approval, and permitting proceedings at both the state and Federal level. Having faced many challenges in developing this advanced international transmission line, TDI brings a unique and deeply informed perspective to the RFI's call for comments on the timelines for regulatory approvals of transmission projects. These comments are particularly responsive to questions (3) and (5) of the RFI.²

I. ABOUT THE CHPE PROJECT

TDI's proposed CHPE project consists of two HVDC cables with a combined capacity of 1,000 MW. When complete, the project will extend from the Canada-United States border to a converter station in Astoria, Queens, New York. To minimize the environmental and social impacts of the project, the vast majority of CHPE's 333 mile line will be buried under waterways (Lake Champlain and the Hudson River) or along existing railroad right-of-ways. Carrying an estimated capital cost of \$2.2 billion, CHPE will yield up to \$650 million in annual savings for New York consumers. CHPE's innovative HVDC system will also advance state-of-the-art transmission technology by minimizing electricity losses usually associated with long-distance transmission.

II. NATURE AND TIMING OF REGULATORY PROCEEDINGS INVOLVING CHPE

Question (5) of the RFI asks for comment on the length of time required to design, permit, and build transmission projects. For CHPE, the process of securing the necessary permits and approvals is complex and involves multiple state and Federal agencies. CHPE hopes to obtain all state and Federal approvals by early 2013, with the objective of starting construction in 2013 and commencing commercial operation in late 2016.

² Question (3) requests comment on "What strategies can the Federal government take to decrease the time that Federal agencies require for evaluating Regulatory Permits for transmission?" *Id.* at p. 11,518. Question (5) seeks information on the length of time required to design, permit, and build transmission. *Id.*

TDI began the CHPE development process in 2008. Thus far, the most time-intensive element of the regulatory process has been the application for a certificate of environmental compatibility and public need (often called an “Article VII” approval) from the New York State Public Service Commission (NYPSC). To facilitate the Article VII approval, CHPE engaged NYPSC staff, other New York State agencies, municipal governments of communities located along the project route, the City of New York, utilities, and environmental organizations to reach a Joint Proposal of Settlement (JP) resolving key issues such as the siting of the project, environmental safeguards, and funding for environmental protection and remediation. On February 24, 2012, the JP was filed with the NYPSC and represented the product of approximately 15 months of extensive stakeholder negotiations.³

To support the JP, CHPE’s Article VII application involved the preparation of detailed and comprehensive studies covering many of the same issues and project alternatives that are required in a Federal Environmental Impact Statement (EIS). In all, the JP included 125 exhibits containing thousands of pages of maps, technical specifications and engineering documents, environmental studies, economic studies, and legal information.

At the Federal level, in January 2010, CHPE applied to DOE for a Presidential permit for the construction of an international transmission facility.⁴ The Presidential Permit requires the concurrence of the Secretary of State and the Secretary of Defense. In December 2010, CHPE also filed applications for construction permits under section 404 of the Clean Water Act⁵ and section 10 of the Rivers and Harbors Act⁶ with the U.S. Army Corps of Engineers, both of which remain pending.⁷ Before any of these permits can be issued, DOE must also complete a Federal EIS for the CHPE project, as required

³ Documents pertaining to the NYPSC proceeding are available online at <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=10-T-0139>.

⁴ Application for Presidential Permit; Champlain Hudson Power Express, Inc., 75 Fed. Reg. 10,229 (Mar. 5, 2010) (OE Docket No. PP-362).

⁵ 33 U.S.C. § 1344 (2006).

⁶ *Id.* § 403.

⁷ Section 404 / Section 10 Permit Application for the Champlain Hudson Power Express Project, http://www.chpexpress.com/docs/regulatory/USACE/CHPE_USACE_Application_Section_404.pdf (last visited Mar. 28, 2012) (CHPE’s application was filed on December 6, 2010).

by the National Environmental Policy Act (NEPA)⁸. This EIS may require, among other things, further inter-agency consultation pursuant to the Endangered Species Act (ESA).

III. BETTER COORDINATION BETWEEN FEDERAL AND STATE APPROVAL PROCESSES WOULD LEAD TO MORE EFFICIENT REVIEW OF PROJECTS LIKE CHPE

Question (3) of the RFI seeks recommendations on strategies the Federal government could implement to decrease the time required to evaluate transmission permits. In CHPE's experience, better coordination between state and Federal approval processes – especially with respect to the preparation of an EIS – presents the greatest opportunity for improving the efficiency of transmission approvals.

CHPE's recently-filed application for an Article VII approval from the NYPSC included a comprehensive environmental analysis. This analysis required considerable time to prepare and, in form and substance, overlaps considerably with the NEPA analysis that DOE is required to prepare for its consideration of CHPE's Presidential Permit application. Although DOE plans to incorporate some of the state-level analysis into the Federal EIS, there are challenges in evaluating the sheer volume of unfamiliar material that was generated during the preparation of the Article VII environmental analysis.

The White House Council on Environmental Quality (CEQ) regulations implementing NEPA already require Federal agencies to cooperate with state and local agencies to eliminate duplicative EIS procedures,⁹ and recognize the benefits of concurrent state and Federal review.¹⁰ It may be appropriate for the RRTT to consider, and the Federal government to adopt, further measures to facilitate coordination between Federal and state agencies in preparing EIS documents. For example, CEQ could issue guidance requiring Federal agencies to promptly contact relevant state and local agencies upon determining that a Federal EIS is required for a project that also must obtain state siting approvals; provide a template memorandum of understanding (MOU) that Federal, state, and local agencies could sign to ensure appropriate coordination and streamlining

⁸ 42 U.S.C. §§ 4332 *et seq.*

⁹ 40 C.F.R. § 1506.2.

¹⁰ 40 C.F.R. § 1500.2(c).

of EIS preparation; and, where it is not possible to complete a joint EIS, encourage or require Federal agencies to obtain state EIS information as soon as it is gathered, and seek to participate in the scoping process for state EIS documents. DOE could also consider adopting one or more such requirements as an amendment to its existing implementing procedures for NEPA¹¹ – which currently provide few details on the elimination of duplicative state and Federal EIS processes.

For projects such as CHPE, the preparation of the Federal EIS could proceed in a more efficient manner if lead agencies were engaged earlier in the process, ideally during the preparation of the state EIS. As an example of these efficiencies, TDI notes that the New York State Department of State (DOS) engaged with the CHPE project early in the process of conducting the Article VII environmental analysis. Because of this early engagement, the DOS was able to process a required Federal authorization – the Coastal Zone Management Act (CZMA) consistency determination – concurrently with the Article VII environmental analysis. DOS ultimately issued the required CZMA determination on the one year anniversary of TDI’s application. As this example shows, early involvement can save time during the subsequent Federal review process by allowing the lead agency to become familiar with the state EIS and supporting studies as they are developed. An additional advantage of early Federal involvement in the state process is that the lead agency may also have an opportunity to shape the state EIS such that larger portions of it can be directly incorporated or referenced in the Federal EIS. Indeed, the most efficient and cost-effective procedure for projects such as CHPE would be to prepare a single EIS that satisfies both state and Federal requirements.

¹¹ 10 C.F.R. Part 1021 (2012).

TDI appreciates DOE's consideration of these comments. Please do not hesitate to contact William Helmer, Senior Vice President and General Counsel, at the address and phone number below with any questions regarding this submission.

Respectfully submitted,

 /s/ Jay Ryan

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