

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

Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects))))	Docket No. AD12-9-000
Priority Rights to New Participant-Funded Transmission))	Docket No. AD11-11-000

**COMMENTS OF
CLEAN LINE ENERGY PARTNERS LLC**

Pursuant to Rule 212 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) rules and regulations, 18 CFR § 212 (2010), Clean Line Energy Partners LLC (“Clean Line”) respectfully submits these comments in response to the Commission’s July 19, 2012 Proposed Policy Statement in the above-captioned proceedings (the “Policy Statement”). Clean Line applauds FERC’s efforts to recognize that increased flexibility will further enable successful transmission development. In these comments, Clean Line responds to the Commission’s statement on the allocation of capacity for new merchant transmission projects and new nonincumbent, cost-based, participant-funded transmission projects.

I. COMMUNICATIONS

All correspondence, communications, pleading, and other documents relating to this proceeding should be served upon:

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II. INTRODUCTION

Clean Line is an independent developer of high voltage, long-haul transmission lines. All four of Clean Line's proposed High Voltage Direct Current ("HVDC") transmission lines will facilitate the reliable delivery of power generated by renewable resources and will support national and state efforts to significantly increase renewable electric generation capacity.¹ The addition of this generation capacity will create new jobs, stimulate domestic manufacturing, and reduce pollution and water consumption.

The most vexing obstacle impeding continued growth in the renewable energy industry is the present lack of expansion of the US transmission grid. Clean Line supports the use of innovative policies and appropriate incentives to encourage the development of much needed transmission infrastructure, which will improve reliability, reduce costs for ratepayers and allow more robust integration of renewable energy resources.

¹ Clean Line presently has four major transmission projects underway in the United States. They are (1) the Rock Island Clean Line, an HVDC transmission line that will connect 3,500 MW of wind power from Iowa, South Dakota, Minnesota and Nebraska with load centers in Illinois and states farther east; (2) the Grain Belt Express Clean Line, an HVDC transmission line that will be capable of moving up to 3,500 MW of renewable power from new generation projects in western Kansas to the Midwest Independent Transmission System Operator, PJM Interconnection LLC and the eastern United States; (3) the Plains & Eastern Clean Line, an 800-mile, HVDC line that will transmit up to 7,000 MW of renewable power from the Oklahoma and Texas Panhandles, and potentially Kansas, to Tennessee Valley Authority and the southeastern United States; (4) the Centennial West Clean Line, an HVDC line that will gather up to 3,500 MW of power from renewable energy generation projects in eastern New Mexico and surrounding areas and will transmit it to load centers such as southern Nevada, Southern California, Arizona, and other areas in the Southwest.

III. COMMENTS

1. Flexibility to negotiate is preferable to an open season requirement

The FERC Policy Statement asserts a role for both uniform rules and processes through the *pro forma* OATT and bilateral negotiations for transmission service. Clean Line agrees that uniform rules and processes under a standardized tariff are appropriate for incumbent utilities that have an obligation to provide cost-based service to all generators and customers; on the other hand, transmission service on merchant lines that do not fit within the traditional mold of transmission cost recovery requires customized business arrangements that allocate risk among the parties involved. These customized arrangements are the result of a *negotiation*. Negotiations are of paramount importance, and if any policy changes are recommended, they must be structured to allow at least as much flexibility as is now present in the subscription process. The Policy Statement's proposal to allow up to 100% of project capacity to be awarded through bilateral negotiations appropriately recognizes the commercial reality of merchant transmission lines and is justified because merchants like Clean Line are not developing projects on the backs of any captive customers and have no incentive to stifle competition or pick favorites.

Prior to issuing the Policy Statement, the Commission proved reluctant to allow different terms to be offered to different customers or at different times. In *Chinook*, the Commission allowed the developer to negotiate bilaterally with anchor tenants on the condition that the same terms agreed to with anchor tenants be subsequently offered in an open season process.² There are several problems with this requirement. By allowing later subscribers to obtain the same terms, the Commission inadvertently creates a disincentive for first mover customers. If a

² *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134 (2009) (*Chinook*).

customer can wait without penalty to see if a project obtains its permits or if a particular market develops, that customer rationally will delay committing until more information is available. Early commitments, however, are vital to merchant transmission developers when attracting financing and before spending significant amounts of money on routing, permitting, engineering, designing and land acquisition for their projects; without an incentive for customers to commit early, projects that are otherwise marketable and provide great public benefit are kept from moving forward.

Another problem with the requirement that the open season terms match the terms offered to anchor tenants is that it creates a rigid, inflexible framework for developers contracting with open season participants. Early stage negotiations for transmission service, such as those that would occur with anchor tenants, result in arrangements that look very much like project development joint ventures, with an allocation of risk that depends on the particular needs of the parties involved and the stage of project development. These bespoke agreements are extremely different from standard form transmission service agreements that appear, for example, in an open access tariff. They address specific areas of concern for individual customers and necessarily evolve with a transmission project's development. As a project progresses, its risk profile reduces and changes, and precedent agreements for transmission service consequently change as well.

The Policy Statement's Proposal to allow all of a project's capacity to be awarded through bilateral negotiations addresses the problems described above. Traditionally, open season processes are characterized by one-way information flow – from bidder to seller; whereas, bilateral negotiations are characterized by two-way flows between the negotiating parties. This two way flow of information is needed to address the requirements of all

customers, not just early customers: Like early customers, later customers have unique needs related to their generation portfolio, creditworthiness, generation location and development status, and risk tolerance, and these needs require negotiated terms and conditions.

2. Notice and reporting requirements are reasonable, but the Commission should provide more guidance to developers.

In order to assure that bilateral negotiations award capacity in a fair and not unduly discriminatory fashion, the Commission proposes that developers (1) broadly solicit interest in the project from potential customers, and (2) file a report with the Commission describing the solicitation, selection and negotiation process. These requirements appropriately balance flexibility with fairness. As Clean Line recommended in previous comments, the developer should issue broad notice in a manner that ensures potential customers are informed of the proposed project.³ The Commission should explicitly state that one method by which a developer will meet the notice requirement is if that developer solicits interest in trade magazines, regional energy publications, transmission planning groups, and email distribution lists addressing transmission-related matters. Such clarity removes uncertainty and ensures that developers pursue these steps. The notice should include transmission developer points of contact and pertinent project dates, as well as sufficient technical specifications and contract information. So long as they provide this broad, transparent notice to interested customers, merchant developers should be allowed the maximum flexibility to successfully negotiate appropriate rates, terms and conditions of service.

The Policy Statement requires reporting on the process by which a merchant developer solicits interest, selects customers for additional negotiation, and awards capacity. Clean Line has no objection to this requirement or the information contained in the report. The Policy

³ Docket No. AD11-11-000, Comments of Clean Line Energy Partners LLC, May 5, 2011.

Statement proposes that developers file this report either in conjunction with their request for negotiated rate authority or as a compliance filing at a later date. Clean Line supports this flexibility, as it may be difficult to characterize completely a selection process prior to engaging in negotiations with customers.

The Policy Statement notes that if any party feels that it was treated in an undue discriminatory way, it may file a complaint under section 206 of the FPA. Clean Line agrees and notes that this opportunity provides an additional protection against undue discrimination. However, it is important that developers understand from the outset which criteria the Commission considers appropriate in awarding capacity. The Policy Statement includes reference to a few acceptable criteria, including credit rating, “first mover” status (i.e., customers who respond early and take on greater project risk), and customers’ willingness to incorporate project risk- sharing into their contracts. These are indeed appropriate and important criteria. Other such criteria that ought to be allowed are the price customers are willing to pay, length of term for transmission service, acceptance of proposed business terms, and the state of advancement in generation project development. The more detail FERC provides about acceptable criteria, the lower the likelihood of future discrimination concerns.

3. *Developers should be allowed to negotiate with affiliates in a non-discriminatory fashion.*

The Policy Statement proposes that affiliates of a developer can participate in the negotiation process, but that the Commission will expect an affirmative showing that the affiliate is not afforded undue preference. Clean Line applauds this added flexibility. Previously, the Commission had allowed a developer’s affiliate only to participate in an open season process by which time the terms of transmission service were fixed. Clean Line agrees that the Commission’s concern should not be that an affiliate receive exactly the same rates and terms as

other customers, but rather that those rates and terms are not unduly preferential and that the affiliate is not given an undue preference in the allocation of capacity. If a developer is compliant with the notice and reporting requirements outlined in the Policy Statement, the developer should be able to negotiate with affiliates through a Commission-authorized negotiation process.

4. Cost-based, participant-funded transmission projects should be subject to the same requirements as merchant projects.

Clean Line agrees that the same requirements that are applied to merchant projects should be applied to non-incumbent, cost-based, participant-funded transmission projects. Whether a project charges negotiated rates or cost-based rates is irrelevant to the process by which it awards capacity.

5. The Commission should not inadvertently harm incumbent utilities' ability to develop merchant projects.

Clean Line believes that incumbent utilities can be valuable partners in merchant transmission, and the Commission should not unnecessarily restrict their participation. Incumbent transmission utilities may invest alongside non-incumbents in merchant transmission projects. Incumbents should not be able to use participant funding as a means to subvert their FERC-approved tariff, but they should have the same freedom as non-incumbents to pursue merchant projects that do not fall within the purview of their tariff.

Clean Line requests that the Commission clarify that incumbents can participate in merchant projects outside their service territory on the same terms as non-incumbent utilities. With respect to incumbents pursuing participant-funded projects inside their service territory, Clean Line supports FERC's proposal to review on a case-by-case basis.

6. Interconnection remains a problem for merchant HVDC lines; FERC should require a process in jurisdictional tariffs.

One area not addressed in the Policy Statement that continues to hinder merchant transmission lines is the lack of an interconnection process for such lines in certain jurisdictional transmission organizations. The Commission should act to ensure that all RTOs/ISOs and transmission providers create interconnection queue processes that do not inhibit merchant transmission lines. Often an HVDC transmission line must resort to “playing generator” to fit into the generation interconnection queue, and it must struggle to meet milestones that do not technically apply to a transmission line. A standard transmission interconnection process for HVDC facilities would remove this barrier.

IV. CONCLUSION

Clean Line commends FERC's efforts to recognize the changing landscape of the electric industry. The Policy Statement is a positive step towards addressing the need for flexibility in merchant transmission capacity sales. It represents a great improvement over prior approaches relying on an "open season," while maintaining protections against undue discrimination.

Respectfully submitted,

/s/ Kathryn L. Patton

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