

139 FERC ¶ 61,142
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Rock Island Clean Line LLC

Docket No. ER12-365-000

ORDER CONDITIONALLY AUTHORIZING PROPOSAL AND GRANTING
WAIVERS IN PART

(Issued May 22, 2012)

1. On November 8, 2011, Rock Island Clean Line LLC (Rock Island) filed a request for authorization to charge negotiated rates for transmission rights on a proposed high voltage direct current (HVDC) merchant transmission project (Project) and for waiver of certain Commission regulations.¹ In this order, the Commission conditionally authorizes Rock Island to charge negotiated rates for transmission rights on the Project and grants in part and denies in part Rock Island's request for waiver.

I. Background

A. Applicant

2. Rock Island is a wholly owned subsidiary of Rock Island Wind Line, LLC, a Delaware limited liability company, which is a wholly owned subsidiary of Clean Line Energy Partners LLC. The majority owner of Clean Line Energy Partners is ZAM Ventures, L.P., the principal investment vehicle for ZBI Ventures, L.L.C. ZBI Ventures,

¹ Commission precedent distinguishes merchant transmission projects from traditional public utilities in that the developers of merchant projects assume all of the market risk of a project and have no captive customers from which to recover the cost of the project. See, e.g., *Hudson Transmission Partners, LLC*, 135 FERC ¶ 61,104 (2011) (*Hudson Transmission*); *Champlain Hudson Power Express, Inc.*, 132 FERC ¶ 61,006 (2010) (*Champlain Hudson*); *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134 (2009) (*Chinook*).

L.L.C is described as focused on long-term investments in the energy sector and is a subsidiary of Ziff Brothers Investments, L.L.C.

B. Description of Project

3. The Project is a 500-mile, ± 600 kV HVDC transmission line and associated facilities capable of delivering up to 3,500 MW from renewable energy projects in eastern South Dakota, eastern Nebraska, western Iowa, and western Minnesota to customers in Illinois and other states, interconnecting with the PJM Interconnection, L.L.C. (PJM) extra-high voltage transmission system at a point to be determined.² Rock Island expects the Project to deliver approximately 15 million MWh of energy per year, helping to satisfy growing demand for electricity in general and particularly for electricity from renewable resources in states like Illinois, which has adopted a renewable portfolio standard. Rock Island describes the location of the Project as ideal for wind-powered generation, and explains that the foundation of the Project is to connect such generation to major load centers.³ Rock Island asserts that the Project will relieve current transmission constraints between the Midwest Independent Transmission System Operator (MISO) and PJM systems, provide added stability and reliability to the PJM system, and reduce prices on both the delivery and windward ends of the Project.⁴

4. Rock Island states that, while the specific route of the Project has yet to be determined, it continues to conduct feasibility studies to determine the optimal route for the line.⁵ Rock Island states that it has identified two to three corridors approximately 3 to 10 miles wide in which to consider siting the Project, and these study corridors have been distributed to more than 50 governmental agencies and nongovernmental organizations for comment.⁶ In addition, Rock Island represents that it has submitted a request to PJM to interconnect the Project with the PJM system in Illinois, has acquired a 2007-vintage interconnection queue position for the same interconnection point as its request, and has submitted a request to MISO to complete the studies required to interconnect with MISO.⁷ Upon completion of the Project, Rock Island states that it will

² *Id.* at 5.

³ *Id.* at 10.

⁴ *Id.* at 8-9.

⁵ *Id.* at 6.

⁶ *Id.*

⁷ *Id.* at 12.

turn over operation of the Project to one of the regional transmission organizations (RTO), either MISO or PJM, to which it will interconnect.⁸

C. Application

5. Rock Island requests authority to sell transmission rights on the Project at negotiated rates and approval of its proposal to allocate 75 percent of the planned Project's capacity to anchor customers. Rock Island commits to holding an open season for the remaining 25 percent of the Project's capacity, as well as for any additional transmission capacity not secured by anchor customers.⁹ Rock Island also commits to: (1) offer the same rates, terms, and conditions that are offered to anchor customers to all open season participants; (2) ensure transparency in the open season process; and (3) report the results of the open season to the Commission. It also commits to filing with the Commission a rate schedule for inclusion in the Open-Access Transmission Tariff (OATT) of either PJM or MISO.

6. Rock Island also requests that the Commission allow it to give preference to renewable energy resources in its open season. Rock Island argues that establishing a preference for renewable energy is essential to developing the Project because interested stakeholders and potential customers are less likely to support a transmission project that will ultimately be used to transmit electricity from coal-fired generation. Rock Island submits that the renewable energy preference is also consistent with the Commission's recognition that transmission planning should incorporate public policy considerations.

7. Rock Island states that obstacles to financing merchant transmission projects can be reduced to the extent that a transmission developer can negotiate financially secure pre-subscription agreements with creditworthy anchor customers. Rock Island explains that it faces a particularly difficult task in developing the Project because it requires coordinating construction of its transmission facility with the construction of new, renewable energy resources.¹⁰

8. Rock Island contends that it meets the four factor analysis as outlined in *Chinook* for approval of negotiated rate authority,¹¹ as discussed more fully below.

⁸ *Id.* at 4.

⁹ *Id.* at 33.

¹⁰ *Id.* at 11.

¹¹ *Chinook*, 126 FERC ¶ 61,134 at PP 37-53.

II. Notice, Intervention, and Responsive Pleadings

9. Notice of Rock Island's Filing was published in the *Federal Register*, 76 Fed. Reg. 72,193 (2011), with interventions and protests due on or before November 29, 2011. The Illinois Commerce Commission filed a notice of intervention. Motions to intervene were filed by Exelon Corporation and PSEG Companies. American Wind Energy Association (AWEA) filed a comment.¹² Interstate Power and Light Company (Interstate) filed a motion to intervene and protest. On December 14, 2011, Rock Island filed an answer to Interstate's protest.

III. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Rock Island's answer because it has provided information that assisted us in our decision-making process.

B. Negotiated Rate Authority

12. In addressing requests for negotiated rate authority from merchant transmission providers, the Commission has demonstrated a commitment to fostering the development of such projects where reasonable and meaningful protections are in place to preserve open access principles and to ensure that the resulting rates for transmission service are just and reasonable.¹³ The Commission's analysis for evaluating negotiated rate

¹² In its comments, AWEA does not take a position with respect to the Project but stresses the importance of the Commission facilitating the expansion of transmission service.

¹³ See, e.g., *TransEnergie U.S., Ltd.*, 91 FERC ¶ 61,230, at 61,838-39 (2000) (accepting a request to charge negotiated rates on a merchant transmission project, subject to conditions addressing, among other things, the merchant's open season proposal); *Mountain States Transmission Intertie, LLC*, 127 FERC ¶ 61,270, at P 57, 59 (2009) (denying a request to charge negotiated rates on a merchant transmission project because, among other things, sufficient protections did not exist to ensure that rates for service would be just and reasonable); *Hudson Transmission*, 135 FERC ¶ 61,104 at

(continued...)

applications focuses on four areas of concern: (1) the justness and reasonableness of rates; (2) the potential for undue discrimination; (3) the potential for undue preference, including affiliate preference; and (4) regional reliability and operational efficiency requirements.¹⁴ This approach simultaneously acknowledges the financing realities faced by merchant transmission developers and the consumer protection 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 projects that can differ substantially from one project to the next.

1. Four-factor Analysis

a. Just and Reasonable Rates

13. To approve negotiated rates for a transmission project, the Commission must find that the rates are just and reasonable.¹⁵ To do so, the Commission must determine that the merchant transmission owner has assumed the full market risk for the cost of constructing its proposed transmission project. Additionally, the Commission must determine whether the project is being built within the footprint of the merchant transmission owner's (or an affiliate's) traditionally regulated transmission system; if so, the Commission must determine that there are no captive customers who would be required to pay the costs of the project. The Commission also considers whether the merchant transmission owner or an affiliate already owns transmission facilities in the particular region where the project is to be located, what alternatives customers have, whether the merchant transmission owner is capable of erecting any barriers to entry among competitors, and whether the merchant transmission owner would have any incentive to withhold capacity.

i. Rock Island's Proposal

14. Rock Island affirms that it will assume the full market risk of the Project and that it will have no captive customers. Rock Island states that it is a new market entrant and it is not building within the footprint of its own or an affiliate's traditionally regulated transmission system. Rock Island also contends that it will operate the Project pursuant

ordering para. (A) (authorizing Hudson Transmission to charge negotiated rates for transmission service).

¹⁴ *Chinook*, 126 FERC ¶ 61,134 at P 37.

¹⁵ *See Champlain Hudson*, 132 FERC ¶ 61,006 at P 17.

to the OATT of either PJM or MISO upon completion of the project. Rock Island asserts that use of such an OATT will prevent it from exercising market power or erecting barriers to entry in the region where the Project will operate.¹⁶

15. Rock Island provides several additional assurances as to why the rates charged will be just and reasonable. Rock Island observes that incumbent transmission owners have an obligation to expand their transmission capacity, upon request, at cost-based rates. Rock Island argues that this requirement limits the negotiated rates that it can offer. Additionally, Rock Island asserts that its rates will be limited by competition from other regional transmission projects, including the MISO Multi-Value Projects, which will also serve wind generators in the Great Plains.¹⁷

ii. Commission Determination

16. The Commission concludes that Rock Island's request for authority to charge negotiated rates for service on the Project is just and reasonable. Rock Island meets the definition of a merchant transmission owner because it assumes all market risk associated with the Project and has no captive customers. Rock Island has agreed to bear all the risk that the Project will succeed or fail based on whether a market exists for its services. Rock Island also has no ability to pass on any costs to captive ratepayers.

17. No entity on either end of the Project is required to purchase transmission service from Rock Island, and customers will do so only if it is cost-effective. As Rock Island points out, Rock Island will be unable to charge rates in excess of the cost of expansion on neighboring utilities. Pursuant to their OATTs, public utilities have an obligation to expand their transmission capacity upon request, at cost-based rates.¹⁸ Therefore, the cost of expansion provides downward pressure on the negotiated rates that Rock Island will charge. Additionally, because neither Rock Island nor its affiliates own any transmission facilities within the footprint of the Project, Rock Island has no ability to erect barriers to entry or exercise market power in the relevant markets. Accordingly,

¹⁶ Filing at 1, 29-30.

¹⁷ *Id.* at 31-32.

¹⁸ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on reh'g*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

these factors lead us to conclude that the requested negotiated rate authority is just and reasonable for service on the Project.

b. Undue Discrimination

18. As explained in *Chinook*, the Commission primarily looks at two factors to ensure that applicants cannot exercise undue discrimination when approving negotiated rate authority: (1) the terms and conditions of a merchant developer's open season; and (2) its OATT commitments (or in the RTO/ Independent System Operators (ISO) context, its commitment to turn operational control over to the RTO or ISO).¹⁹ The Commission requires merchant transmission owners to file reports on the open season results shortly after the close of the open season. Such reports provide transparency to the allocation of initial transmission rights, as well as the basis for an entity to file a complaint if it believes it was treated in an unduly discriminatory manner.²⁰

i. Rock Island's Proposal

19. Rock Island asserts that there is good reason to grant its request for authority to presubscribe up to 2,850 MW, or 75 percent of the maximum planned capacity, committing to offering at least 25 percent of the Project's total capacity in the open season. Rock Island asserts that negotiated rates are particularly necessary given this Project's unique circumstances in which new renewable energy resources and new infrastructure are being constructed simultaneously.²¹ Rock Island also argues that wind generators, whose energy the Project will likely transmit, present numerous risks that transmission project developers and investors must overcome. For example, Rock Island states that wind energy projects are typically constructed with shorter lead times than other generators and are less willing to commit to large transmission projects well in advance of generator construction. Rock Island argues that pre-subscription of capacity with creditworthy anchor customers can reduce financing obstacles because lenders demand to see a secure source of revenue as a predicate to project financing.²²

¹⁹ *Chinook*, 126 FERC ¶ 61,134 at P 40.

²⁰ See *Montana Alberta Tie, Ltd.*, 116 FERC ¶ 61,071, at P 37 (2006) (*MATL*) (“[T]he Commission's concern in evaluating the open season process is to provide transparency in the bidding process and to enable unsuccessful bidders to determine if they were treated in a fair manner.”).

²¹ Filing at 11.

²² *Id.* at 21-22.

20. Rock Island states that it has reached out to known potential power developers and load-serving entities, but will provide information for and consider negotiating with any *bona fide* candidate that expresses interest. It states that the selection of entities with whom it will enter negotiations will be based on selection criteria that are consistent with Commission requirements for negotiated rate authority.²³ Rock Island also commits to holding an open season for all capacity not pre-subscribed by anchor shippers or initially pre-subscribed but that later becomes available.

21. Moreover, Rock Island commits to offering the same rates, terms, and conditions given to anchor customers to any open season participant willing to purchase transmission capacity for the same term.²⁴ Rock Island also states that to ensure transparency, the specific rules of the open season, detailed bidding guidelines, evaluation criteria, estimated rates, and proposed form agreements will be posted on its internet website and forwarded to interested parties. Rock Island asserts that it will also provide public notice of the open season in appropriate trade publications. Rock Island states that the results of the open season auction will be posted on its website.²⁵

22. Rock Island asserts that it would be unable to resize the Project were the solicitation process to reveal market interest in excess of its planned transmission capacity because it would result in delays and additional costs. It states that resizing the Project would require it to resubmit its interconnection request with PJM as well as incur new engineering costs, modify the Project's converter stations, and conduct new studies. Rock Island states that it is unopposed to undertaking additional transmission projects in the future but argues that it is not financially or practically feasible to materially increase the size of this Project.²⁶

23. As previously discussed, the Project will be located within the footprints of both the MISO and PJM RTOs. Thus, upon completion, Rock Island states that it intends to turn over operational control of the Project to one of those RTOs and recover its costs through a schedule in that RTO's OATT that is specific to the Project.²⁷

²³ *Id.* at 24.

²⁴ *Id.* at 23.

²⁵ *Id.* at 33-35.

²⁶ *Id.* at 26.

²⁷ *Id.* at 30, 35.

24. Rock Island requests Commission approval to grant preferred status to offers from customers transmitting energy from renewable resources in the open season. Specifically, it proposes that it be permitted to score proposals premised on the transmission of electricity from renewable resources more highly than proposals to transmit energy from non-renewables in the open season.²⁸ Rock Island asserts that such a preference is “not undue given the important public policies encouraging the development and use of energy from renewable resources” and is consistent with the Commission’s recognition that transmission planning should incorporate public policy considerations, such as requirements that load-serving entities meet renewable energy mandates.²⁹

25. Additionally, Rock Island contends that establishing a preference for renewables is essential in developing the Project because interested stakeholders and potential customers, including environmental organizations and renewable energy developers, are less likely to support a transmission project that will ultimately be used to transmit coal-fired generation.³⁰ Rock Island states that it will analyze bids received according to pre-determined criteria, post on its website the results of any open season it conducts, and file the results of the open season with the Commission.

26. Rock Island argues that the Commission has permitted transmission developers considerable leeway in constructing an open season suited to the subjective needs of the transmission developer, including allowing use of qualitative considerations in open seasons.³¹ It also asserts that, though not approved by the Commission, Zephyr Power Transmission, LLC’s open season criteria included a non-price factor providing preference for energy from renewable energy projects.³²

²⁸ *Id.* at 9-10.

²⁹ *Id.* at 34 (citing *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011)).

³⁰ *Id.*

³¹ *Id.* at 17 (citing *TransEnergie U.S., Ltd.*, 91 FERC ¶ 61,347 (2000); *Northeast Utilities Serv. Co.*, 98 FERC ¶ 61,310 (2002) (*Northeast Utilities*)).

³² *Id.* at 18-19 (citing Open Season Report for Zephyr Power Transmission, LLC at 10, Docket No. ER09-433-000 (May 20, 2010)).

ii. Commission Determination

27. The Commission looks specifically at the merchant transmission owner's open season and OATT commitments in determining whether negotiated rate authority could lead to undue discrimination on a particular merchant transmission project. As the Commission explained in *Chinook*, we evaluate on a case-by-case basis proposals to allocate all or a portion of initial capacity outside of an open season.³³

28. The Commission will accept Rock Island's proposal to pre-subscribe up to 75 percent of transmission capacity to anchor customers. As Rock Island points out, it must secure long-term commitments from creditworthy anchor customers to support financing the Project. We have approved similar requests to allocate capacity to anchor customers in the past in light of the difficulties in financing merchant transmission projects.³⁴ Rock Island states that it will provide information for and consider negotiating with any *bona fide* candidate that expresses interest, and the selection of entities with whom it will enter negotiations will be based on selection criteria that are consistent with Commission requirements for negotiated rate authority. Additionally, Rock Island has committed to offer at least 25 percent of the Project's capacity in the open season. Therefore, given the specifics of the Project and the facts and commitments presented in the application, we find Rock Island's proposal to seek up to 75 percent presubscription from anchor customers to be reasonable.

29. Consistent with Commission precedent, we will condition acceptance of Rock Island's request on Rock Island making an informational filing with the Commission for any anchor customer transaction describing the terms of the agreement and the relevant facts and circumstances leading to the agreements no later than 30 days after the end of the open season.³⁵

³³ *Chinook*, 126 FERC ¶ 61,134 at P 42.

³⁴ See, e.g., *Chinook*, 126 FERC ¶ 61,134 at PP 60-63 (approving *Chinook's* presubscription of up to 50 percent of the project capacity to anchor customers); *Champlain Hudson*, 132 FERC ¶ 61,006 at P 47 (approving *Champlain Hudson's* proposal to seek up to 75 percent presubscription from anchor customers); *Southern Cross Transmission LLC*, 137 FERC ¶ 61,207, at P 28 (2011) (approving *Southern Cross's* presubscription of up to 75 percent of the project capacity to anchor customers).

³⁵ *Champlain Hudson*, 132 FERC ¶ 61,006 at P 44; *Hudson Transmission*, 135 FERC ¶ 61,104 at P 29.

30. We also approve Rock Island's request to sell the remaining 25 percent of the Project's capacity using an open season auction, subject to the submission of informational reports.³⁶ As stated in *Chinook* and *Hudson Transmission*, open seasons must be fair, transparent, and non-discriminatory, and we will continue to require open season reports to be filed with the Commission shortly after the close of the open season.³⁷ The reports must include, at the very least, the terms of the open season (including notice of the open season and the method for evaluating bids), the identity of the parties that purchased capacity, and the amount, term, and price of the capacity. This open season reporting requirement and the process by which parties are afforded an opportunity to file complaints will continue to be the primary tools by which the Commission ensures that merchant transmission developers do not unduly discriminate.³⁸ The open season informational report should be filed within 30 days of the open season.

31. We do not approve, however, Rock Island's request to apply a preference for energy from renewable resources in its open season. Rock Island argues generally that public policy considerations and its need to attract support from stakeholders such as environmental organizations justify such a renewable energy preference. We find that Rock Island's general arguments do not sufficiently explain how distinctions between renewable energy resources and other types of generators justify its requested preferential treatment in an open season for initial transmission capacity. The Commission has not previously approved the inclusion of a preference for energy from renewable resources in a transmission owner's open season criteria, and Rock Island has failed to provide sufficient justification to do so here.³⁹

³⁶ Filing at 15-16.

³⁷ *Chinook*, 126 FERC ¶ 61,134 at P 41; *Hudson Transmission*, 135 FERC ¶ 61,104 at P 30.

³⁸ *Chinook*, 126 FERC ¶ 61,134 at P 41; *Champlain Hudson*, 132 FERC ¶ 61,006 at P 45; *Hudson Transmission*, 135 FERC ¶ 61,104 at P 30.

³⁹ The Commission has approved transmission developers' use of qualitative cost- and risk-based factors when scoring open season bids. *See, e.g., Northeast Utilities*, 98 FERC ¶ 61,310 at 62,329 (approving an open season bid evaluation process in which "the possibility of risk-sharing or co-development" in the course of a project would cause a bid to be favored and "a bid that is more demanding administratively would be less desirable because of the risk of incurring additional future project overhead costs."); *TransEnergie*, 91 FERC ¶ 61,347 at 62,167 (approving an open season proposal that included "non-price considerations" which "can reduce the project's risk and/or increase the project's value").

32. Once the Project has commenced operation, consistent with *Chinook*, Rock Island must file: (1) books and records for the Project that comply with the Uniform System of Accounts found in Part 101 of the Commission's regulations,⁴⁰ and will be subject to examination as required in Part 41 of the regulations,⁴¹ and (2) Rock Island's books and records audited by an independent auditor.⁴² These commitments will assist the Commission in carrying out its oversight role. Consistent with its commitment, upon the Project's completion, Rock Island must also make the Project subject to either MISO or PJM's OATT.

33. Rock Island asserts that it will be unable to resize the Project if the open season solicitation process reveals excessive market interest because resizing would result in prohibitive delays and additional costs. This issue may be moot, as it is uncertain whether the Project will be over-subscribed. However, if Rock Island's open season results in oversubscription, we require that Rock Island in its open season report justify in greater detail its reasons for not expanding the Project and for allocating capacity among open season participants.

c. Undue Preference and Affiliate Concerns

34. In the context of merchant transmission, our concerns regarding the potential for affiliate abuse arise when the merchant transmission owner is affiliated with either the anchor customer, participants in the open season, and/or customers that subsequently take service on the merchant transmission line.

i. Rock Island's Proposal

35. Rock Island pledges that no affiliate will be an anchor tenant for capacity on the Project.⁴³ Rock Island states that, if an affiliate should subsequently take service on the transmission line, operational control of the Rock Island facilities by an RTO will ensure that no undue preference results. Rock Island also commits to file its open season report with the Commission, which will provide the terms of the open season, including notice of the open season and the method for evaluating bids; the identity of the parties that

⁴⁰ 18 C.F.R. Part 101 (2011).

⁴¹ 18 C.F.R. Part 41 (2011).

⁴² *Chinook*, 126 FERC ¶ 61,134 at P 62; *Champlain Hudson*, 132 FERC ¶ 61,006 at P 48; *Tres Amigas LLC*, 130 FERC ¶ 61,207, at P 90 (2010).

⁴³ Filing at 36.

purchased the capacity; and the amount, term, and price of that capacity. Finally, Rock Island will file electric quarterly reports of its transactions and comply with the Commission's Standards of Conduct to the extent required of similar transmission providers subject to the jurisdiction of the Commission.⁴⁴

ii. Commission Determination

36. In light of the commitments made in the application, we find that Rock Island adequately addresses any affiliate concerns present at this early stage of the Project. Furthermore, we note that Rock Island commits to comply with the Standards of Conduct and file electric quarterly reports of its transactions as required of transmission providers.⁴⁵ Moreover, as discussed above, the commitments made by Rock Island regarding the open season process and reporting requirements will ensure that all transactions are transparent.

d. Regional Reliability and Operational Efficiency

37. Merchant transmission projects, like cost-based transmission projects, are subject to mandatory reliability requirements.⁴⁶ Merchant transmission developers are required to comport with all applicable requirements of the North American Electric Reliability Corporation (NERC) and any regional reliability council in which they are located.

i. Rock Island's Proposal

38. Rock Island commits to participating in the reliability planning processes of the RTO to which it turns over operational control of the Project. Additionally, Rock Island commits to complying with all applicable reliability rules, including applicable NERC requirements and procedures.⁴⁷ Rock Island states that it has submitted an

⁴⁴ *Id.*

⁴⁵ 18 C.F.R. § 35.10(b) (2011); *see also* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 817; Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 394.

⁴⁶ *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, FERC Stats. & Regs. ¶ 31,204, *order on reh'g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

⁴⁷ Filing at 36.

interconnection request with PJM and submitted a request to MISO to complete the studies required to interconnect with MISO.⁴⁸

ii. Protest and Answer

39. In its protest, Interstate states that it cannot support the Project because Rock Island has provided only limited information on the Project's potential effects and demonstrated a lack of due diligence and transparency. Interstate argues that Rock Island makes unsupported claims in its filing regarding the Project's reliability benefits and that, to substantiate these claims, Rock Island should conduct analysis and modeling with PJM and MISO to examine the potential effects of the Project on surrounding systems. Interstate maintains that the results of Rock Island's interconnection requests should be made available to stakeholders so that they can understand the effects of the Project. Finally, Interstate states that it supports the Project's cost allocation approach but requests that the Commission specifically order that costs associated with the Project be only allocated to subscribers in order to protect customers in the Project area from any cost responsibility or potential problems that may occur.

40. In its answer, Rock Island responds that the Project's impact on either MISO or PJM will be determined, and subsequently addressed if needed, in connection with the interconnection process of each RTO. Rock Island states that it has provided MISO and PJM with sufficient detail on the Project to enable them to determine whether the Project meets reliability criteria pursuant to Section 215 of the FPA and that it has initiated the interconnection study process with each RTO. Rock Island also states that, as a merchant transmission developer, it is under no obligation to submit itself to RTO evaluation and selection process.⁴⁹ Finally, Rock Island clarifies that it is not seeking cost allocation for the Project, but will recover its costs from customers who have contractually agreed to purchase capacity through a rate schedule in the RTO's OATT specific to the Project.

iii. Commission Determination

41. Rock Island commits that the Project will comply with applicable NERC and PJM/MISO reliability requirements. Additionally, Rock Island indicates that it has already filed an interconnection request with PJM and has submitted a request to complete the studies required to interconnect with MISO. Accordingly, we find that Rock Island has met the regional reliability and operational efficiency requirement,

⁴⁸ *Id.* at 12.

⁴⁹ Rock Island Answer at 2-3 (citing Order No. 1000, 136 FERC ¶ 61,051 at P 165).

subject to Rock Island's continued participation in the necessary regional planning processes.

42. With regard to Interstate's protest, the RTOs will determine the Project's reliability impact on their systems as well as the cost to ameliorate any negative impacts through the interconnection study process. In addition, we note that Rock Island has already represented that it will recover its costs from customers who have contractually agreed to purchase capacity through a rate schedule in the RTO's OATT specific to the Project.

2. Waiver Requests

a. Rock Island's Proposal

43. Rock Island requests that the Commission grant it waivers of the same filing requirements that the Commission previously granted other merchant transmission providers.⁵⁰ Specifically, Rock Island requests waiver of: (1) section 35.15(a) of the Commission's regulations (abbreviated cost-of-service filings); (2) the full reporting requirements in Subparts B and C of Part 35 of the Commission's regulations, except for sections 35.12(a) (filing of initial rate schedules), 35.13(b) (general information to be filed with rate schedules), 35.15 (notices of cancellation or termination), and 35.16 (notices of succession); (3) Part 141 (forms and reports, with the exception of sections 141.14 and 141.15), including the requirement to file FERC Form No. 1, Annual Report of Major Electric Utilities, Licensee and Others; and (4) Part 41 (accounts, records, and disposition of audit findings, with the exception of sections 41.1 through 41.8) and Part 101 (uniform system of accounts).

44. Rock Island states that, because it is proposing to charge negotiated rates, the regulations requiring the filing of cost-of-service data are not relevant.⁵¹ Rock Island asserts that granting the requested waivers is appropriate because it will not sell at cost-based rates and does not have captive customers. Rock Island commits to keep separate books and records for the Project, to keep such books and records in accordance with generally accepted accounting principles, and to make such books and records available to the Commission for inspection.

⁵⁰ Filing at 37 (citing *Hudson Transmission*, 135 FERC ¶ 61,104 at P 35; *Chinook*, 126 FERC ¶ 61,134 at PP 68-69; *Champlain Hudson*, 132 FERC ¶ 61,006 at P 59).

⁵¹ *Id.* at 38 (citing *Hudson Transmission*, 135 FERC ¶ 61,104 at PP 42-43).

b. Commission Determination

45. Because Rock Island is proposing to charge negotiated rates, the Part 35 regulations requiring the filing of cost-based data are not applicable. For good cause shown and consistent with our findings for other merchant transmission proposals, we will grant waiver of section 35.13(a) of the Commission's regulations and the filing 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 35.16.⁵²

46. The Commission will also grant Rock Island's request for waiver of Part 141 (with the exception of sections 141.14 and 141.15), including the Form No. 1 filing requirement. The Commission has previously granted waiver of the Form No. 1 filing requirement to merchant transmission owners.⁵³

47. The Commission declines to grant Rock Island's request for waiver of Parts 41 and 101.⁵⁴ The Commission finds that it is important for all transmission-owning utilities, including merchant transmission owners, to maintain their books and records in accordance with the Uniform System of Accounts should the Commission require Rock Island to produce this information in the future. This finding is consistent with the Commission's established policy of denying waiver of Parts 41 and 101 to merchant transmission owners in *TransEnergie*, *TransEnergie - Hydro One*, *Northeast Utilities*, and *Neptune*.⁵⁵ While the Commission departed from this policy by granting waiver of Parts 41 and 101 to a merchant transmission owner in *Hudson Transmission*,⁵⁶ upon

⁵² *Hudson Transmission*, 135 FERC ¶ 61,104 at P 42; *Tres Amigas LLC*, 130 FERC ¶ 61, 207, at P 103 (2010); *Wyoming Colorado Intertie, LLC*, 127 FERC ¶ 61,125, at P 62 (2009) (*Wyoming*); *Linden VFT, LLC*, 119 FERC ¶ 61,066 at P 42 (2007) (*Linden*).

⁵³ *Wyoming*, 127 FERC ¶ 61,125 at P 65; *Linden*, 119 FERC ¶ 61,066 at P 44; *MATL*, 116 FERC ¶ 61,071 at P 66.

⁵⁴ *Id.* P 43.

⁵⁵ *TransEnergie U.S. Ltd.*, 98 FERC ¶ 61,147 at 61,457 (2002) (*TransEnergie*); *TransEnergie U.S. Ltd. and Hydro One Delivery Services Inc.*, 98 FERC 61,144 at 61,502 (2002) (*TransEnergie – Hydro One*); *Northeast Utilities*, 98 FERC ¶ 61,130 at 62,331; and *Neptune Regional Transmission System, LLC*, 96 FERC ¶ 61,147 at ordering para. (G) (2001) (*Neptune*).

⁵⁶ *Hudson Transmission*, 135 FERC ¶ 61,104 at P 43.

further review we conclude that this departure from prior policy was not warranted. Consistent with our previous orders, we find that it is appropriate to deny waiver of these provisions to merchant transmission owners in order to facilitate regulatory oversight. Accordingly, Rock Island will be required to keep its books and records in accordance with the Uniform System of Accounts, consistent with Part 101 of the Commission's regulations, and be subject to examination by the Commission pursuant to Part 41 of the Commission's regulations.

The Commission orders:

(A) Rock Island is hereby granted authority to sell transmission rights on its proposed merchant transmission project at negotiated rates, subject to conditions, as discussed in the body of this order.

(B) Rock Island is hereby directed to file with the Commission a report describing the terms of the anchor tenant agreements and the results of any open season within 30 days after the end of the open season, as discussed in the body of this order.

(C) Rock Island is hereby directed to file, upon completion of the Project, a rate schedule for service under the OATT for the RTO to which it hands over operational control, as discussed in the body of this order.

(D) The Commission grants Rock Island's requests for 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, as discussed in the body of this order.

(E) The Commission grants Rock Island's request for waiver of Part 141 of the Commission's regulations, with the exception of sections 141.14 and 141.15, as discussed in the body of this order.

(F) The Commission denies Rock Island's request for waiver of Parts 41 and 101 of the Commission's regulations.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Document Content(s)

ER12-365-000.DOC.....1-17