



## **I. COMMUNICATIONS**

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

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## **II. BACKGROUND**

On March 15, 2011, the Commission held a technical conference to obtain further information to aid it in considering issues related to the ownership of, and priority access rights to, new participant-funded transmission projects. In particular, the Commission sought to explore issues related to priority rights to use transmission infrastructure developed under various new business models in two specific contexts: independent and/or merchant transmission and generator lead lines. In both contexts, participants were encouraged to identify and discuss the appropriate balance between the Commission's requirements for open access and the needs of project developers. Participants were also encouraged to propose and discuss specific regulatory alternatives that are consistent with the Commission's open access policies and its statutory responsibility to ensure that rates, terms, and conditions of service are just and reasonable and not unduly discriminatory or preferential. Staff asked participants to be prepared to address how the economics of a proposed project might be affected by the Commission's current affiliate rules and pricing structures (e.g., cost-based or negotiated rates).

As the United States moves to achieve its ambitious renewable energy goals – 29 states and Washington DC have a Renewable Portfolio Standard (RPS) – a dramatic expansion of the

transmission grid is needed to incorporate renewable resources. Clean Line hopes to play an instrumental role in accelerating the delivery of renewable energy from remote resource areas to distant load centers and in achieving U.S. environmental policy goals. The need for lines like those that Clean Line is developing will continue to grow as electricity demand increases in the United States and as the demand for clean power sources accelerates. Technology improvements in wind and in transmission make the efficient transportation of wind energy more feasible now than ever before.

Clean Line is an independent developer of high voltage, long-haul transmission lines and is not involved in any way with resource development or generation. Clean Line is developing high voltage direct current (HVDC) transmission lines that will export wind, and potentially solar energy, from some of America's best resources to load centers and customers in regions with less plentiful or less cost effective local renewable energy resources. It is Clean Line's belief that the all-in delivered cost of these high-quality renewable resources, including transmission, is lower than local, less favorable renewable energy sources.

Clean Line has already made significant progress on its proposed transmission projects. The Company is developing the Plains & Eastern Clean Line to deliver wind and solar generated electricity, to be produced in southwestern Kansas, northwestern Oklahoma and the Texas panhandle, to the Tennessee Valley Authority and other areas of the southeastern United States. The Plains & Eastern Clean Line will consist of two parallel circuit  $\pm$  600 kilovolt direct current overhead transmission lines and is scheduled to deliver up to 7,000 MW of associated power to the TVA network and surrounding areas beginning in 2016.

In the upper Midwest, Clean Line is developing the Rock Island Clean Line, a high-voltage, direct current transmission line that will be capable of moving up to 3,500 MW of wind-

generated electricity from Iowa and South Dakota or Nebraska with load centers near Chicago and the surrounding region. Although wind energy in Iowa, Minnesota, and the Dakotas has grown impressively in recent years, the construction of new projects will grind to a halt if additional transmission lines are not built soon. The Rock Island Clean Line will allow for continued growth of the wind industry in Iowa and surrounding areas.

Also in the Midwest, Clean Line is developing the Grain Belt Express Clean Line, a high voltage, direct current 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 service territory of the Midwest Independent Transmission System Operator and to the eastern United States.

In the West, Clean Line is developing the Centennial West Clean Line, a high-voltage, direct current transmission line that will gather energy 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. The Project will deliver up to 3,500 megawatts (MW) of associated power to these load centers beginning as early as 2016.

All four of Clean Line's projects will facilitate the reliable delivery of power generated by renewable resources, and the development of these projects will support national efforts to significantly increase renewable electric generation capacity. These projects will meet the needs of generators and utilities for new transmission capacity and will enable the construction of thousands of megawatts of new, cost-effective renewable electric generation capacity. The addition of this generation capacity will create new jobs, stimulate domestic manufacturing, and reduce pollution and water consumption.

### III. COMMENTS

At the Technical Conference, panelists were encouraged to address the effect of the Commission's current affiliate rules and pricing structures (e.g., cost-based or negotiated rates) on the economics of a proposed project, as well as on efforts to right-size/up-size a proposed project. Panelists were also asked to discuss the need for, and appropriate application of, mechanisms to ensure customer interest in, and access to, new transmission (including, but not necessarily limited to anchor shipper/tenant arrangements and open seasons). In addition, panelists were encouraged to comment on how such mechanisms can be implemented to accommodate developers' project development and customers' needs, while satisfying the Commission's open access policies and responsibility to ensure that rates are just and reasonable and not unduly discriminatory or preferential.

As the Commission proceeds to formalize its approach to merchant and independent transmission, it should keep in mind that there is no one-size-fits-all approach to addressing impediments to successful project development since each project presents its own unique challenges. The Commission needs to provide flexibility, depending on the individual project circumstances presented. The following are specific recommendations.

#### A. **Inter-Regional Planning**

In area of transmission planning, the Commission should ensure that a fair *inter*-regional transmission planning process that does not exclude independent and merchant transmission projects exists. HVDC projects, like those being developed by Clean Line, span multiple regions and do not fit neatly into the existing *regional* planning forums. To the extent that regional cost-allocation is sought, Clean Line recognizes that regional participation would be appropriate. However, there is no need to require HVDC merchants to participate in *regional* transmission

planning forums, since shippers and beneficiaries pay for the revenue requirements of the projects; i.e., cost allocation may not be sought. Where such is the case, the Commission should ensure that RTO planning processes do not serve to slow down or otherwise inhibit such projects.

## **B. Preference for Renewable Energy**

As Clean Line works to site its transmission projects, enlisting allies (e.g., various environmental organizations, wind energy generators, and associations) is key to making it clear that Clean Line's projects are not intended to be used to transport coal-fired generation. Additionally, if Clean Line uses authority granted by New Mexico's Renewable Energy Transmission Authority<sup>5</sup> (NM RETA) or participates in the Western Area Power Administration's (WAPA) Transmission Infrastructure Program,<sup>6</sup> (TIP) Clean Line's transmission line must transport renewable energy. Clean Line recognizes that as an open access transmission service provider it cannot prohibit any generator from connecting to and using its transmission line. The Commission should, however, consider some flexibility in this regard to ensure that such projects are not "killed" by the opposition before they are built or are prohibited from participating with NM RETA or under WAPA's TIP. To that end, Clean Line urges the Commission to recognize the unique nature of HVDC projects like ours and allow a preference in favor of renewable resources during any Open Season process, should the full capacity of the project not be fully subscribed during the anchor-tenant negotiation process.<sup>7</sup> Disallowing such a preference for renewable energy puts transmission developers using programs like NM RETA or

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<sup>5</sup> See NMSA 1978, Section 62-16A-2, which requires 30% of the energy transported be from renewable resources,

<sup>6</sup> See Section 402 the American Recovery and Reinvestment Act, which requires the purpose of the transmission line be for "delivering or facilitating the delivery of power generated by renewable energy resources."

<sup>7</sup> Although Clean Line's HVDC projects will interconnect multiple generators on the windward side, a generator tie line analogy can be made.

WAPA's TIP in a bind and subverts the legislative intent of these programs, whose purposes are to promote the construction of transmission for the transport of renewable energy.

### **C. Open Access and Transparency**

At the March 15<sup>th</sup> technical conference, the Commission heard some of the challenges faced by transmission project developers in trying to obtain capacity contracts in sufficient amounts, contract terms and creditworthiness to allow project financing, and construction of their projects. As we go about our business, HVDC developers, like Clean Line, size their projects to ensure that the complex, 3-actor problem is best resolved – by bringing together generators on the “windward” side, and load-serving entities (markets) on the sinking side, through very long and capital-intensive transmission lines (and associated converter stations). To ensure financing and project success, the Commission should allow developers of merchant transmission to seek Commission authorization to subscribe through the anchor-tenant process subscriptions of capacity up to 100% (the percentage to be justified by the developer in its filing with the Commission). Of course, this level of flexibility would be contingent on the developer conforming to certain guidelines for transparency during the subscription process. This flexibility is justified since merchants like Clean Line are not developing projects on the backs of any captive customers. Further, as independents, entities like Clean Line have no incentive or ability to stifle competition between or amongst generators or transmission companies.

Clean Line recommends that the Commission permit a transmission line to be subscribed through 100% anchor-tenants if the following guidelines are followed:

1. A developer must have a written, publicly available “policy” with respect to its process for soliciting capacity subscribers, explaining how its solicitations are conducted and how the developer ensures a fair process in obtaining anchor tenants or participant funders, including the developer’s credit policies.

2. A developer must give “notice” to potential capacity subscribers of its policies, including a public announcement of its project and the contact for negotiating transmission service, and any applicable deadlines. Notice of the contact or changes to the contact must be made to all entities who have expressed interest in arranging for transmission capacity.
3. A project website must be maintained, including a contact for arranging transmission capacity, any applicable deadlines, and the developer’s policy for arranging for service.
4. The developer should propose in its filing, inter alia, screening parameters by which it defines suitable entities that are eligible to be considered as potential anchor-tenant customers, including but not limited to creditworthiness, minimum subscription amounts, etc., including preferences for renewable technologies, if desired by the developer.
5. All project information, as well as questions submitted and answers provided by the developer, should be made publicly available on the project website.
6. Anchor tenants should not have their capacity pro-rated downwards if demand exceeds capacity during subsequent Open Season processes, assuming that the line capacity cannot be increased for the same (or lower) per unit cost.

In addition, to prevent any possibility of undue discrimination during the subscription process, the Commission should require that there be a “safe harbor” to ensure no undue discrimination in favor of anchor tenants, and it should also require subsequent agreements to be negotiated at arms’ length on a first-come-first-served basis between unaffiliated generators and transmission developers. This should not, however, prevent differential pricing between “first-movers” and entities that wait to commit forward. Clean Line agrees specifically with Tonbridge Power’s comments during the Technical Conference that “first movers” (for example, those willing to take on early risk) should get the benefit of advantageous rates. As an analogy, Clean Line notes that a similar risk-reward process exists in the U.S. drug industry, which provides a

20-year drug patent protection as a reward for research and development (R&D).<sup>8</sup> This patent protection gives the company who expends the money in R&D, plus clinical trials, incentive to continue developing new drugs by being the only company that can profit from a particular drug for a set period of time in order to recoup the expenditure and earn a profit. Clean Line suggests that a similar justification exist for merchant transmission developers that invest their own dollars in the development and permitting process to bring extremely complex projects to market and their customers that commit early or otherwise share in those development risks.

If the anchor-tenant negotiation phase concludes but capacity remains available, that capacity should be made available first through an Open Season and then through an open access, non-discriminatory basis, through an OASIS or other transparent mechanism. The developer must also submit an OATT to allow the resale of unused capacity rights in secondary markets. However, no Open Season should be required if the project is fully subscribed during the anchor-tenant negotiation phase, as long as all transparency guidelines described above are met. In addition, for the reasons discussed earlier, transmission developers should be given the flexibility to provide a preference for renewable resources during the subscription process.

#### **D. Affiliated Anchor Tenants**

While Clean Line does not have any affiliates that either own generation or are load serving entities, Clean Line recognizes that entities such as these may make natural partners for the ultimate financing, construction, and operation of Clean Line's projects. For this reason, in the area of affiliate transactions, Clean Line urges the Commission to consider allowing affiliates

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<sup>8</sup> Patents expire 20 years from the date of filing, and are granted by the patent and trademark office anywhere along the development lifeline of a drug and can encompass a wide range of claims. "Exclusivity" is also granted by the FDA: exclusivity is the exclusive marketing rights as granted by the FDA upon approval of a drug, and can, or not, run concurrently with a patent. Exclusivity is a statutory provision and is granted to an applicant if statutory requirements are met. Exclusivity was designed to promote a balance between new drug innovation and generic drug competition.

to be anchor tenants, subject to a FERC-approved capacity limitation for affiliates; Clean Line suggests that an appropriate limit be 75%.

Extending the “generator tie line” approach to the merchant transmission model, there may be many circumstances in which a generator needs a tie line with excess capacity. This creates the opportunity for the generator to partner with the merchant transmission developer. Such a partnership is prohibited under the current Commission rules. This prohibition presents an impediment to successful merchant development of HVDC projects. Because of their capital costs, transmission line developers require an extensive reach into the financial markets. Debt and equity investors in transmission projects underwrite their investments by looking to the quality underlying source of revenue. Merchant transmission presents unique challenges as it does not rely on regulated rates or captive ratepayers for the recovery of costs. Debt and equity investors in merchant transmission will closely scrutinize the creditworthiness of transmission service customers and are also likely to require long-term contracts of twenty or more years. In order for a transmission service contract to be financed, a customer must typically either have an investment grade credit rating (BBB- or higher from Standard and Poor’s or Baa3 or higher from Moody’s) or, alternatively, post a large amount of additional security in the form of a letter of credit or cash deposits.

The extensive credit requirements for transmission service exclude a large number of potential customers from purchasing service on merchant transmission lines. The issue is particularly important for the renewable energy sector, where project developers run the gamut of size and creditworthiness from large multinational corporations to small, local, family interests. In order to broaden the customer base of merchant transmission, Clean Line believes that the Commission must allow innovative structures.

One way to limit the credit requirements of merchant transmission service is to finance the generation and transmission line together. In practice, this is done all the time with “gen ties.” Such a joint financing structure requires common ownership of generation and transmission facilities. If the generation and transmission facilities share common financing and ownership, it greatly reduces the payment risk. Implementing such a structure would require the Commission to relax restrictions around affiliate ownership of generation and transmission for merchant transmission projects.

#### **E. Transmission Interconnection**

To ensure the reliability of the transmission system, a transmission developer must demonstrate proper coordination with other systems and no adverse impact on reliability. One of the barriers that Clean Line faces in the development of its projects is navigating the interconnection processes for the various RTOs or other entities with which its transmission projects will interconnect. Unfortunately, at the present time in most RTOs, merchant transmission projects are somewhat akin to the square peg attempting to fit into the RTOs’ round holes. Oftentimes, an HVDC project must attempt to look like a generator to fit into the generation interconnection queue, and it must be able to meet milestones that do not technically apply to a transmission line project. At the same time, at the other end of an HVDC project, the “windward,” gathering side, the converter station looks like a load. A standard merchant transmission interconnection process would help remove this barrier. The Commission should ensure that all RTOs/ISOs and transmission providers have sufficiently robust interconnection queue processes so that transmission projects do not face barriers to entry and can move along expeditiously.

All that Clean Line asks in this area is that there is a rigorous queue process, with no “free passes” for anyone in the queue, and a process for HVDC interconnection that fits the

requirements and timeframes unique to merchant transmission projects. Since HVDC projects are unlike the traditional “reliability” or “economic” transmission project categories being used to study transmission project viability and integration, one possibility might be to define a new category for HVDC projects, creating a new queue within RTOs.

The intent of an interconnection queue process is to ensure that projects seeking to interconnect to the Bulk Electric System are reliably interconnected (i.e., impacts are studied and discovered-impacts are mitigated) and to create a fair queue process that gives preference to projects that submit interconnection requests before others (“first in, first out”). In addition, the queue process should accelerate those projects that are ready to move forward in the interconnection process, before others who are not ready, through the application of appropriate milestones (which, of course, also helps the planning authorities administer their queue processes more effectively).

Customers seeking interconnection service expect the following out of an ideal interconnection process: 1) standardized study timelines; 2) flexible study assumptions that consider the type of resource being interconnected (e.g., baseload vs. renewable); 3) milestones targeted to the type of project seeking interconnection service (generation vs. transmission) and that are reasonably attainable (including the ability for a project to delay interconnection with proper proof of progress and proof that delays could not be avoided); 4) flexibility to decide what level of interconnection service is desired (firm injection rights vs. non-firm injection rights); 5) flexibility to decide the MW level of each type of interconnection service desired (some portion firm vs. some portion non-firm); 6) the ability to request a reduction in firm vs. non-firm injection rights based on study results; and 7) the ability to request an increase in firm rights at a later date (subject to proper studies).

A model for transmission projects that has been developed and seems to fit the bill when considering the different timelines and regulatory hurdles of siting a long transmission line is included below. The general approach is that a transmission interconnection queue would be managed, separate from the generation interconnection queue; however, these two queues would be studied as if a single queue. The ability for a project to transition from one queue to the other, therefore, is not a problem as long as milestones that are deemed equivalent between the two queues have been met.

### *Milestones for Controllable Transmission Lines (HVDC or Controllable AC)*

#### **Standard Milestones**

- Study deposits – Similar study deposits would be required as for a generation interconnection process; however, milestones based on a MW injection level are not appropriate as this level of security presents a barrier of entry when considering significantly larger MW injections.
- Site control – Provide evidence of an ownership interest in, or right to acquire or control, the site(s) where major equipment (e.g., a new transformer or D.C. converter stations) would be installed, such as a deed, option agreement, lease, or other similar document acceptable to the Transmission Provider;

#### **Post-studies, pre-ISA requirements:**

- Applicant should have filed applications to obtain permits or other required approvals for the construction of its proposed Controllable Transmission Facilities
- Applicant should have a signed memorandum of understanding for the acquisition of major equipment.
- Other milestones may be included in the Interconnection Service Agreement that, if not met, will relieve the Transmission Provider and the Transmission Owners from the requirement to construct necessary upgrades and will deem the interconnection request withdrawn. These may include site acquisition, permitting, regulatory certifications (if required), acquisition of any necessary third-party financial commitments, commercial operation, and similar events.

- Milestone dates may be reasonably extended (including those required in order to proceed with an interconnection service agreement) in the event that delays are not caused by the customer, such as unforeseen regulatory or construction delays that could not be remedied by the customer through the exercise of due diligence.

Once the interconnection service agreement is filed, the Applicant must provide the Transmission Owner/Transmission Provider with a Letter of Credit for the estimated cost of the work that the Transmission Owner will be responsible for performing on the required interconnection facilities and network upgrades that are scheduled to be completed during the first three months after such work commences. Finally, prior to Commercial Operation, the Applicant must provide the Transmission Provider with terms and conditions for reservation, interruption, and curtailment priorities for firm and non-firm transmission service across the Controllable Transmission Line. In addition, the Applicant should provide the Transmission Provider with the results of a Commission-approved process for allocation of Transmission Injection Rights and a listing of the rights not allocated in the process.

As we move forward, the Commission should ensure that projects ready to move along now do not get stalled in the existing processes while waiting for the new processes to be designed and implemented. To usher things along, limited waivers from current tariffs may be required to ensure that projects in current development are allowed to move forward, even though the generation queue milestones technically do not fit HVDC projects.

#### **F. Partnering Incentives**

In response to certain other issues raised during the Technical Conference, FERC should also encourage, or provide incentives for, incumbent transmitting utilities to partner with independent transmission providers in developing and building long-distance lines. This is particularly relevant in non-ISO/RTO markets. In addition, FERC should encourage, or provide

incentives for, traditional incumbent utilities to subscribe to capacity on independent or merchant lines where the economics of subscription make sense. To assist in this area, FERC could act to make incumbent utilities indifferent as to whether to invest in a line itself, or to execute a transmission service agreement (TSA) with the independent developer. To effect this indifference, the Commission could allow such utilities to roll the costs, plus a return, into their transmission cost of service, and allow selling of that transmission capacity under their OATT as if it were owned. This would permit the utility's customers to purchase renewable energy at the generator and transport such generation to its load for a single transmission rate.<sup>9</sup> Such a structure would make incumbent utilities indifferent as to whether to invest in a line itself, or to execute a transmission service agreement with the independent developer.

#### **G. Right Sizing**

Clean Line notes that arguments were made during the Conference regarding (1) "right-sizing" of independent/merchant projects, and (2) incentives to undersize the projects in order to ensure that the line is fully subscribed. These arguments need to be debunked. As noted by one of the panelists, success for merchant transmission projects is the ability to subscribe the capacity to the level needed to support financing. This is the litmus test of whether a transmission project proceeds, but changing the size of a project can introduce uncertainty in this process. In addition, arguments that flexibility on merchant or independent lines will balkanize the grid and return us to the "bad old days" make absolutely no sense. Traditional utilities, with captive customers, service territories, obligations to serve, etc., stand ready, willing, and able to continue serving as the regulated backstop, utilizing traditional transmission

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<sup>9</sup> In the natural gas industry, the Commission has allowed natural gas pipelines to acquire capacity on other pipelines and resell the capacity under their own tariff. See *Texas Eastern Transmission Corp.*, 93 FERC ¶ 61,273 (2000). See also, *Wyoming Interstate Co., Ltd. and Colorado Interstate Gas Co.*, 84 FERC ¶ 61,007 (1998); *rhg.* denied 87 FERC ¶ 61,011 (1999); *Trunkline Gas Co. and Koch Gateway Pipeline Co.*, 80 FERC ¶ 61,356 (1997); *Tennessee Gas Pipeline Co. and Columbia Gulf Transmission Co.*, 78 FERC ¶ 61,182,(1997).

planning, expansion, and service. Merchant lines serve to accomplish specific goals that cannot or are not being achieved by the traditional planning processes. In fact, the balkanization of the grid is largely due to uncoordinated planning processes and cost allocation schemes.

Interregional and long haul merchant lines such as those being developed by Clean Line decrease fragmentation of the power grid. HVDC lines make the best sense for very long distances (i.e., over 400 miles) and the Commission needs to offer greater flexibility to serve their unique application.

#### **IV. Commission Action in Response to Post-Technical Conference Comments**

Commission policies on merchant transmission have been developed on a case-by-case basis in the past, and Clean Line recommends that this process continue. There is no need to go through a lengthy NOPR process for the Commission to provide increased flexibility to the developers of merchant transmission facilities with respect to ensure that projects are developed consistent with open access transmission principles.

Developers will still need to file either petitions for declaratory rulings or Section 205 rate filings to describe and seek Commission authorization for anchor-tenant/open season solicitations. The Commission's willingness to provide greater flexibility in the development of these projects should be provided in the context of Commission action on these filings.

#### **V. CONCLUSION**

At Clean Line, we are putting our investor's dollars at risk to successfully integrate the best wind resource in the world with load centers and markets. We are working to ensure proper alignment of incentives with multiple parties: customers/shippers (both generators and load-serving entities), as well as owners, and stakeholder communities. The Commission should allow us the flexibility to best design our projects, and business structures. In addition, FERC

should ensure that the lack of existing processes for interconnecting interregional HVDC projects does not stifle projects that are necessary to meet critical policy goals.

Respectfully submitted,

/s/ Kathryn L. Patton

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