

140 FERC 61,187
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Plains and Eastern Clean Line LLC
Plains and Eastern Clean Line Oklahoma LLC

Docket No. ER12-2150-000

ORDER CONDITIONALLY AUTHORIZING PROPOSAL AND GRANTING
WAIVERS

(Issued September 7, 2012)

1. On June 29, 2012, Plains and Eastern Clean Line LLC and Plains and Eastern Clean Line Oklahoma LLC (Applicants) 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 waivers of certain Commission regulations.¹ In this order, the Commission conditionally authorizes Applicants to charge negotiated rates for transmission rights on the Project and grants Applicants' request for waivers.

I. Background

A. Applicants

2. Applicants are two wholly owned subsidiaries of Plains and Eastern Clean Line Holdings LLC (Plains and Eastern Holdings), a limited liability company organized under the laws of the state of Delaware. Plains and Eastern Holdings is a wholly owned

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*).

subsidiary of Clean Line Energy Partners LLC (Clean Line), which is also a limited liability company organized under the laws of Delaware. Zam Ventures, L.P., a subsidiary of Ziff Brothers Investments, L.L.C., is the majority owner of Clean Line and the principal investment vehicle for ZBI Ventures, L.L.C., which Applicants describe as focused on long-term investments in the energy sector.

B. Description of Project

3. The Project is a 750-mile, 600 kV HVDC transmission line and associated facilities capable of delivering up to 3,500 MW from western Oklahoma, southwestern Kansas, and the Texas Panhandle to the Tennessee Valley Authority's (TVA) 500 kV system near Memphis, Tennessee.² Applicants expect the Project to deliver approximately 15 million MWh of energy per year from western Oklahoma to its eastern end in Tennessee. According to Applicants, the Project will capitalize on the rich and energetic wind resources in areas that are capable of producing wind-generated electricity efficiently and at low cost.³ Applicants assert that the Project is an efficient and cost-effective way to satisfy the increasing demand for renewable energy and wind-generated electricity specifically in Arkansas, Tennessee, and states farther east.⁴

4. Applicants state that, while the specific route of the Project has yet to be determined, they continue to conduct field reviews and stakeholder outreach to determine the optimal route for the line.⁵ Applicants state that they have conducted more than 1,500 meetings related to development of the Project, which has provided guidance in identifying one corridor approximately five to eight miles wide in which to consider siting the Project.⁶ In addition, Applicants assert that they have obtained a certificate of public convenience and necessity to operate as a transmission public utility in the state of Oklahoma, they are continuing to seek public utility status and analyze permitting options in the state of Arkansas, and they will file an application in 2013 with TVA requesting a certificate of convenience and necessity to develop, own, and operate transmission lines in the state of Tennessee. Furthermore, Applicants provide that, pursuant to section 1222 of the Energy Policy Act of 2005, the Department of Energy, in consultation with the

² Application at 6.

³ *Id.* at 8.

⁴ *Id.* at 9 and n.9.

⁵ *Id.* at 7.

⁶ *Id.* at 7-8.

Southwestern Power Administration, has indicated its willingness to enter into a development agreement and begin a federal environmental review of the Project under the National Environmental Policy Act to expedite the permitting process.⁷ Upon completion of the Project, Applicants state that they will turn over operation of the Project to the Southwest Power Pool, Inc. (SPP) or another qualified entity that performs functions similar to a Regional Transmission Organization (RTO) or Independent System Operator (ISO) and/or offers non-discriminatory service pursuant to the *pro forma* Open Access Transmission Tariff (OATT) requirements.⁸

C. Application

5. Applicants request authority to sell transmission rights on the Project at negotiated rates and approval of their proposal to allocate up to 75 percent of the planned Project's capacity to anchor customers. Applicants commit 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 Applicants also commit 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. They also commit to filing an OATT administered by the qualified entity to which they hand over operational control of the Project or a rate schedule in the entity's OATT.

6. Applicants state 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. Applicants explain that they face 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

7. Applicants contend that they meet the four-factor analysis as outlined in *Chinook* for approval of negotiated rate authority.¹¹

⁷ *Id.* at 12-13.

⁸ *Id.* at 1.

⁹ *Id.* at 24.

¹⁰ *Id.* at 22.

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

II. Notice, Intervention, and Responsive Pleadings

8. Notice of Applicants' filing was published in the *Federal Register*, 77 Fed. Reg. 40,875 (2012), with interventions and protests due on or before July 20, 2012. Exelon Corporation and Arkansas Electric Energy Consumers, Inc. filed timely motions to intervene. Arkansas Public Service Commission (Arkansas Commission) filed a motion to intervene out-of-time.

III. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), the Commission will grant the Arkansas Commission's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Negotiated Rate Authority

10. 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.¹² The Commission's analysis for evaluating negotiated rate 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

¹² 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 PP 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 ordering para. (A) (authorizing Hudson Transmission to charge negotiated rates for transmission service).

requirements.¹³ The Commission requires that applicants satisfy all four areas in order to charge negotiated rates. This approach simultaneously acknowledges the consumer protection mandates of the Federal Power Act and the Commission's open access requirements as well as the financing realities faced by merchant transmission developers. 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 may differ substantially from one project to the next.

1. Four-factor Analysis

a. Just and Reasonable Rates

11. To approve negotiated rates for a transmission project, the Commission must find that the rates are just and reasonable.¹⁴ 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. Applicants' Proposal

12. Applicants affirm that they will assume the full market risk of the Project and that they will have no captive customers. Applicants state that they are a new market entrant and they are not building within the footprint of their own or an affiliate's traditionally regulated transmission system. Applicants also contend that they will turn over operational control of the Project to SPP or another qualified entity upon completion of the project. Applicants assert that this will prevent them from exercising market power or erecting barriers to entry in the region where the Project will operate.¹⁵

¹³ *Chinook*, 126 FERC ¶ 61,134 at P 37.

¹⁴ *See Champlain Hudson*, 132 FERC ¶ 61,006 at P 17.

¹⁵ Application at 1, 29-30.

13. Applicants provide several additional assurances as to why the rates charged will be just and reasonable. Applicants observe that incumbent transmission owners have an obligation to expand their transmission capacity, upon request, at cost-based rates. Applicants argue that this requirement limits the negotiated rates that they can offer. Additionally, Applicants assert that their rates will be limited by customers' ability to purchase transmission service over SPP's grid, including existing capacity and planned SPP transmission projects designed to serve wind generators in the Great Plains.¹⁶

ii. Commission Determination

14. The Commission concludes that Applicants' request for authority to charge negotiated rates for service on the Project's capacity satisfies the first factor of the four-factor test, and is just and reasonable. Applicants meet the definition of a merchant transmission owner because they assume all market risk associated with the Project and have no captive customers. Applicants have agreed to bear all the risk that the Project will succeed or fail based on whether a market exists for their services. Applicants also have no ability to pass on any costs to captive ratepayers.

15. No entity on either end of the Project is required to purchase transmission service from Applicants, and presumably, customers will do so only if it is cost-effective. As Applicants point out, they 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.¹⁷ Therefore, the cost of expansion provides downward pressure on the negotiated rates that Applicants will charge. Additionally, because neither Applicants nor their affiliates own any transmission facilities within the footprint of the Project, Applicants have no ability to erect barriers to entry or exercise market power in the relevant markets. Accordingly, these factors lead us to conclude that the requested negotiated rate authority is just and reasonable for service on the Project.

¹⁶ *Id.* at 31-32.

¹⁷ *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).

b. Undue Discrimination

16. 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/ISO) context, its commitment to turn operational control over to the RTO or ISO.¹⁸ 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.¹⁹

i. Applicants' Proposal

17. Applicants assert that there is good reason to grant their request for authority to pre-subscribe up to 75 percent of the maximum planned capacity, with their commitment to offer at least 25 percent of the Project's total capacity in the open season. Applicants argue that wind generators, whose energy the Project will likely transmit, present numerous risks that transmission project developers and investors must overcome. For example, Applicants state 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. Applicants argue 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.²⁰

18. Applicants state that they will solicit known potential power developers and load-serving entities, but will provide information for and consider negotiating with any *bona fide* candidates that express interest. Applicants also state that the selection of entities with whom they enter negotiations will be based on selection criteria consistent with Commission requirements for negotiated rate authority.²¹ Additionally, Applicants

¹⁸ *Chinook*, 126 FERC ¶ 61,134 at P 40.

¹⁹ *See Montana Alberta Tie, Ltd.*, 116 FERC ¶ 61,071, at P 37 (2006) (*MATL*) (asserting that the 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).

²⁰ Application at 21-22.

²¹ *Id.* at 23-24.

commit to holding an open season for all capacity not pre-subscribed by anchor shippers or initially pre-subscribed but that later becomes available.

19. In the initial open season, Applicants commit to offering the same terms and conditions given to anchor customers to any open season participant willing to purchase transmission capacity under the same terms.²² Applicants also state 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. Applicants also commit that they will also provide public notice of the open season in appropriate trade publications. Additionally, Applicants state that the results of the open season auction will be posted on an internet website.²³

20. Applicants assert that the Project cannot be readily modified, depending on the extent of the market interest. Applicants contend that any reduction in the size would require Applicants to increase the anticipated cost of subscribing to capacity on the Project, making it more difficult to secure customers and financial support for the Project. If the solicitation process reveals market interest in excess of its planned transmission capacity, Applicants state this would support the development of a second phase of the Project, but note that the receipt and delivery points would likely differ from those currently contemplated for the Project. Regardless, Applicants argue that they would be unable to re-size the Project without prohibitive delays and additional costs. Applicants assert that they have submitted interconnection requests to TVA for the designed capacity of the Project and would have to restart the interconnection process if Project capacity increases. According to Applicants, increasing the capacity would also require new engineering costs, modifications to the Project's converter stations, and new studies for the Project. Applicants state that they are not opposed to undertaking a second phase of the Project in the future but contend that it is not financially or practically feasible to materially increase the size of this Project.²⁴

21. As previously discussed, Applicants state that the Project will connect new renewable energy resources within the planning region of SPP to the TVA network. Thus, Applicants state that upon completion, they intend to turn over operational control of the Project to either SPP or another qualified entity such as an RTO or ISO and

²² *Id.* at 33.

²³ *Id.* at 33.

²⁴ *Id.* at 25-26.

recover their costs through a schedule in that entity's OATT that is specific to the Project.²⁵

ii. **Commission Determination**

22. 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.²⁶

23. The Commission accepts Applicants' proposal to pre-subscribe up to 75 percent of transmission capacity to anchor customers. As Applicants point out, they 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.²⁷ We note that Applicants state that they will provide information for and consider negotiating with any *bona fide* candidate that expresses interest, and the selection of entities with whom they enter negotiations will be based on selection criteria that are consistent with Commission requirements for negotiated rate authority. Additionally, Applicants have 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 Applicants' proposal to seek up to 75 percent presubscription from anchor customers to be reasonable.

24. Consistent with Commission precedent, we condition acceptance of Applicants' request on Applicants making an informational filing with the Commission for any anchor customer transaction describing the terms of the agreement and the relevant facts

²⁵ *Id.* at 30-31, 36.

²⁶ *Chinook*, 126 FERC ¶ 61,134 at P 42.

²⁷ *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); *Rock Island Clean Line LLC*, 139 FERC 61,142, at P 28 (2012) (approving *Rock Island's* presubscription of up to 75 percent of the project capacity to anchor customers).

and circumstances leading to the agreements no later than 30 days after the end of the open season.²⁸

25. We also approve Applicants' request to sell the remaining 25 percent of the Project's capacity using an open season auction, subject to the submission of informational reports.²⁹ 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.³⁰ 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.³¹ The open season informational report should be filed within 30 days after the end of the open season.

26. Once the Project has commenced operation, Applicants 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,³² and will be subject to examination as required in Part 41 of the regulations;³³ and (2) Applicants' books and records audited by an independent auditor.³⁴ These commitments will assist the Commission in carrying out its oversight role. Consistent with their commitment, upon the Project's completion, Applicants must also make the Project subject to the OATT of either SPP or another

²⁸ *Champlain Hudson*, 132 FERC ¶ 61,006 at P 44; *Hudson Transmission*, 135 FERC ¶ 61,104 at P 29.

²⁹ Application at 15-16.

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

³¹ *Id.*; *Champlain Hudson*, 132 FERC ¶ 61,006 at P 45.

³² 18 C.F.R. Part 101 (2012).

³³ 18 C.F.R. Part 41 (2012).

³⁴ *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).

qualified entity, such as an RTO or ISO, by filing an OATT administered by that entity or a rate schedule in that entities' OATT.

27. Applicants assert that they 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 at this time whether the Project will be over-subscribed. However, if Applicants' open season results in oversubscription, we require that Applicants, in their open season report, explain in greater detail their reasons for not expanding the Project and for allocating capacity among open season participants.

c. Undue Preference and Affiliate Concerns

28. 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. Applicants' Proposal

29. Applicants pledge that no affiliate will be an anchor customer for capacity on the Project.³⁵ Applicants state that, if an affiliate should subsequently take service on the transmission line, operational control of the Applicants facilities by an RTO or ISO will ensure that no undue preference results. Applicants also commit to filing their 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 purchased the capacity; and the amount, term, and price of that capacity. Finally, Applicants will file electric quarterly reports of their 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.³⁶

ii. Commission Determination

30. In light of the commitments made in the application, we find that Applicants adequately address any affiliate concerns present at this early stage of the Project. Furthermore, we note that Applicants commit to complying with the Standards of Conduct and to file electric quarterly reports of their transactions as required of

³⁵ Application at 31.

³⁶ *Id.* at 35.

transmission providers.³⁷ Moreover, as discussed above, the commitments made by Applicants regarding the open season process and reporting requirements will ensure that all transactions are transparent.

d. Regional Reliability and Operational Efficiency

31. Merchant transmission projects, like cost-based transmission projects, are subject to mandatory reliability requirements.³⁸ 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. Applicants' Proposal

32. Applicants commit to turning over operational control of the Project to SPP or another qualified entity upon completion of the project. Applicants will also participate in the reliability planning processes of the entity to which they turn over operational control of the Project. Additionally, Applicants commit to complying with all applicable reliability rules, including applicable NERC requirements and procedures.³⁹

ii. Commission Determination

33. Applicants commit to turning over operational control of the Project to SPP or another qualified entity upon completion of the project. Applicants also commit that the Project will comply with applicable NERC and the applicable RTO/ISO reliability requirements. Accordingly, we find that Applicants have met the regional reliability and operational efficiency requirement, subject to Applicants' participation in the necessary regional planning processes.

³⁷ 18 C.F.R. § 35.10(b) (2012); *see also* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 817, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 394.

³⁸ *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).

³⁹ Application at 36.

2. Waiver Requests

a. Applicants' Proposal

34. Applicants request 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) the requirement to file FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees and Others; and (4) Part 141 relating to forms and reports, with the exception of sections 141.14 and 141.15.⁴⁰

35. Applicants contend that their proposal to charge negotiated rates nullifies the regulations requiring the filing of cost-based data.⁴¹ Applicants additionally assert that granting the requested waivers is appropriate because they will not sell at cost-based rates and they do not have captive customers. Applicants commit to keeping separate books and records for the Project, in accordance with generally accepted accounting principles, and further commit to making such books and records available to the Commission for inspection.

b. Commission Determination

36. Because Applicants are proposing to charge negotiated rates, the 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 35.16.⁴²

37. The Commission will also grant Applicants' request for waiver of Part 141 (with the exception of sections 141.14 and 141.15), including the Form No. 1 filing

⁴⁰ *Id.* at 37 (citing *Hudson Transmission*, 135 FERC ¶ 61,104 at PP 42-43).

⁴¹ *Id.*

⁴² *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*).

requirement. The Commission has previously granted waiver of the Form No. 1 filing requirement to merchant transmission owners.⁴³

The Commission orders:

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

(B) Applicants are hereby directed to file with the Commission a report describing the terms of the anchor customer 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) Applicants are hereby directed to file, upon completion of the Project, an OATT administered by the qualified entity to which they hand over operational control or a rate schedule in the entity's OATT, as discussed in the body of this order.

(D) Applicants' 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 and Part 141 (including the Form No. 1 filing requirement), of the Commission's regulations, with the exception of sections 141.14 and 141.15, is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁴³ *Wyoming*, 127 FERC ¶ 61,125 at P 65; *Linden*, 119 FERC ¶ 61,066 at P 44; *MATL*, 116 FERC ¶ 61,071 at P 66.