148 FERC ¶ 61,122
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, John R. Norris,
Tony Clark, and Norman C. Bay.

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

Docket No. ER14-2070-000

ORDER CONDITIONALLY AUTHORIZING PROPOSAL AND GRANTING WAIVERS

(Issued August 14, 2014)

1. In this order, the Commission conditionally authorizes Plains and Eastern Clean Line LLC and Plains and Eastern Clean Line Oklahoma LLC (jointly, Plains and Eastern) to charge negotiated rates for transmission rights on a proposed high-voltage direct current (HVDC) merchant transmission project (Project) and grants Plains and Eastern's request for waiver of certain Commission requirements.[1]

I. Background

A. Applicants

2. Plains and Eastern state that they are wholly-owned subsidiaries of Plains and Eastern Holdings LLC, a Delaware limited liability company, which is a wholly-owned subsidiary of Clean Line Energy Partners LLC (Clean Line). Plains and Eastern state that the primary owners of Clean Line are ZAM Ventures, L.P., which is the principal investment vehicle for ZBI Ventures, L.L.C., and GridAmerica Holdings Inc.

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[1] Under the Commission's precedent, merchant transmission projects differ from those of 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. Thus, on a case-by-case basis, the Commission has allowed merchant projects to be priced based on negotiated rates and has granted certain waivers. *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*).

(GridAmerica). ZBI Ventures, L.L.C. is described in the application as being focused on long-term investments in the energy sector and is listed as a subsidiary of Ziff Brothers Investments, L.L.C. Plains and Eastern explain that GridAmerica is a subsidiary of National Grid USA, which is a subsidiary of National Grid plc.

3. The application states that, in addition to the Project, Clean Line, through its wholly-owned direct and indirect subsidiaries, has four high voltage transmission line projects under development in different regions of the United States: (1) Grain Belt Express Clean Line, an approximately 750-mile HVDC line that will transmit up to 3,500 MW of renewable power from western Kansas to southwestern Indiana; (2) Rock Island Clean Line, an approximately 500-mile HVDC transmission line that will transmit up to 3,500 MW of renewable power from northwest Iowa and the surrounding area to load centers in Illinois and states farther east; (3) Centennial West Clean Line, an HVDC line that will transmit up to 3,500 MW of renewable power from eastern New Mexico and west-central Arizona to load centers such as southern Nevada, southern California, and Arizona; and (4) Western Spirit Clean Line, which Clean Line and the New Mexico Renewable Energy Transmission Authority are jointly developing and which consists of a 345 kV AC transmission line that is about 200 miles long and that will transmit up to 1,500 MW of renewable power from east-central New Mexico to markets in the western United States.

B. Description of the Project

4. Plains and Eastern describe the Project as a 700-mile HVDC transmission system that will be capable of delivering up to 3,500 MW of power, originating in Texas County, Oklahoma and terminating in Shelby County, Tennessee. Plains and Eastern also plan for the Project to include an intermediate converter station that would interconnect to the 500 kV transmission system in central Arkansas operated by the Midcontinent Independent System Operator, Inc. (MISO). As described in the application, the Project will traverse parts of the service territories of Southwest Power Pool, Inc. (SPP), the Tennessee Valley Authority (TVA), and MISO, but Plains and Eastern state that they are still in the process of determining the specific route.[2] Plains and Eastern estimate that the Project will cost approximately $2 billion, and state that they have invested millions in development activities. Plains and Eastern state that they expect to commence construction on the Project as early as 2016 and place the Project into service as early as 2018.[3] Plains and Eastern note that they are currently conducting studies with SPP, MISO, and TVA to ensure that the Project will safely and reliably interconnect to the

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[2] Application at 10.

[3] *Id.* at 6-8.

existing transmission grid.[4] Plains and Eastern state that, once the Project is completed, they will turn over operational control of the Project to a Regional Transmission Organization (RTO) or other existing third-party transmission provider, which will operate the line pursuant to a FERC-approved non-discriminatory rate schedule filed under the RTO's Open Access Transmission Tariff (OATT) or pursuant to another FERC-approved OATT.[5]

5. Plains and Eastern state that the Project is designed to facilitate the development and export of wind resources from the Oklahoma Panhandle region to load-serving entities in Tennessee, Arkansas, the Mid-South, and the Southeast, and note that development of the vast untapped wind potential of the Oklahoma Panhandle region is constrained by lack of available transmission capacity. According to Plains and Eastern, connecting these abundant supplies of wind with load centers will enable the development of thousands of megawatts of high capacity factor wind resources.[6]

6. Plains and Eastern contend that, to the extent a new HVDC transmission line reduces the amount of energy that would otherwise flow on the existing grid, the result would be improved reliability, reduced losses, and reduced congestion on the grid, with lower overall energy production costs. In addition, Plains and Eastern state that the Project will provide added resilience and reliability to the bulk power system.[7]

C. <u>Application</u>

7. On May 30, 2014, Plains and Eastern filed a request for authorization to sell transmission rights on the Project at negotiated rates and for waiver of certain Commission regulations. Accordingly, Plains and Eastern request Commission approval of their proposed open solicitation and capacity allocation process, subject to their commitment to demonstrate in one or more post-allocation compliance filings that their selection of customers is consistent with the Commission-approved process. Plains and Eastern also propose to allocate up to 100 percent of the Project's initial capacity to one or more transmission customers through their solicitation and capacity allocation process. Plains and Eastern contend that their process meets the four-factor analysis as outlined in *Chinook* for approval of negotiated rate authority and that it is in compliance with the

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[4] *Id.* at 8.

[5] *Id.* at 16.

[6] *Id*. at 7.

[7] *Id*. at 7.

Commission's Policy Statement addressing the allocation of capacity for new merchant transmission projects and participant-funded transmission projects.[8]

II. Notice, Intervention, and Responsive Pleadings

8. Notice of Plains and Eastern's filing was published in the *Federal Register*, 79 Fed. Reg. 32,933 (2014), with interventions and protests due on or before June 20, 2014. SPP and TVA filed timely motions to intervene.

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 (2013), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Negotiated Rate Authority

10. In addressing requests for negotiated rate authority from merchant transmission providers, the Commission is committed to fostering the development of such projects, but requires reasonable and meaningful protections to be in place to preserve open access principles and to ensure that the resulting rates for transmission service are just and reasonable.[9] The Commission's analysis for evaluating negotiated rate applications focuses on four areas of concern: (1) the justness and reasonableness of the rates; (2) the

[8] *Id.* at 14 (citing *Chinook*, 126 FERC ¶ 61,134 at P 37) and *id.* at 12 (citing *Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects*, 142 FERC ¶ 61,038 (2013) (Policy Statement)).

[9] *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 Paragraph (A) (2011) (authorizing Hudson Transmission to charge negotiated rates for transmission service).

potential for undue discrimination; (3) the potential for undue preference, including affiliate preference; and (4) regional reliability and operational efficiency requirements.[10]

1. Policy Statement

11. On January 17, 2013, the Commission issued the Policy Statement to clarify and refine its policies governing the allocation of capacity for new merchant transmission projects and new nonincumbent, cost-based, participant-funded transmission projects.[11] The Commission allows the developer of a new merchant transmission project to select a subset of customers, based on not unduly discriminatory or preferential criteria, and negotiate directly with those customers to reach agreement for procuring up to 100 percent of transmission capacity when the developer: (1) broadly solicits interest in the project from potential customers and (2) demonstrates to the Commission that the developer has satisfied the solicitation, selection and negotiation process set forth in the Policy Statement.[12] To the extent the developer complies with these requirements, the Commission will find that the developer has satisfied the second (undue discrimination) and third (undue preference) factors of the four-factor analysis.[13]

12. Under the Policy Statement, once a developer has identified a subset of customers through the open solicitation process, the Commission will allow the developer to engage in bilateral negotiations with each potential customer. In these negotiations, the Commission will allow for distinctions among prospective customers based on transparent and not unduly discriminatory or preferential criteria, with the potential result that a single customer, including an affiliate, may be awarded up to 100 percent of the transmission capacity.[14]

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[10] *Chinook*, 126 FERC ¶ 61,134 at P 37.

[11] Policy Statement, 142 FERC ¶ 61,038 at P 1.

[12] *Id.* P 16.

[13] *Id.* P 15.

[14] *Id.* P 28.

2. Four-Factor Analysis

a. Factor One: 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. Plains and Eastern's Proposal

14. Plains and Eastern state that they will assume all market risk associated with the development and construction of the Project and that there will be no captive customers.[16] Plains and Eastern assert that they are a new market entrant into SPP, MISO, and TVA and that no affiliate owns or controls facilities in the same area served by the Project. Plains and Eastern note that an affiliate is developing a merchant transmission line that will interconnect to SPP and MISO, but contend that the line will serve different areas within SPP and MISO and does not raise any market power issues.[17] Plains and Eastern also state that, when the transmission line is completed, they will turn over operational control of the line to an RTO or other existing third-party transmission provider, which will operate the line under a Commission-approved OATT.

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

[16] Application at 15.

[17] Plains and Eastern state that this line, being built by its affiliate, Grain Belt Express Clean Line, is an HVDC line with a western terminus in western Kansas. Plains and Eastern contend that transmission service rates on both the Project and the Grain Belt Express Clean Line will be subject to the Commission's jurisdiction and open access requirements. Plains and Eastern also contend that their affiliation with National Grid USA does not raise market power issues because National Grid USA's utility operations are located in markets remote from the Project. *Id.* at n.14.

15. Plains and Eastern assert that potential customers can pursue alternative transmission service from incumbent transmission owners operating where the Project will be built, who are obligated to provide service at cost-of-service rates (capped at the incumbent utility's cost of expansion). Plains and Eastern also assert that, as they have no captive customers, customers will purchase transmission service from Plains and Eastern only to the extent that it is cost-effective for them to do so, and that there are potentially competing transmission projects in the area that will discipline the Project's negotiated rates. Additionally, Plains and Eastern state that the Commission has found that the negotiated rate that merchant transmission customers are willing to pay is effectively capped by the difference in the market price for power at either end of the line.[18]

ii. Commission Determination

16. We conclude that Plains and Eastern's request for authority to charge negotiated rates for service on the Project meets the first of the *Chinook* factors, that is, the rates will be just and reasonable. Plains and Eastern are assuming full financial risk for the Project, have no captive customers, and neither Plains and Eastern nor any affiliate owns or operates transmission facilities in the same area served by the Project. Additionally, no entity is required to purchase transmission service from Plains and Eastern, and customers have the alternative of purchasing transmission from incumbent owners in the area. Further, Plains and Eastern and its affiliates do not own or control any barriers to market entry or have any incentive to withhold capacity on the Project. Accordingly, under these circumstances, we conclude that the requested negotiated rate authority will result in just and reasonable rates for service on the Project.

b. Factor Two: Undue Discrimination

17. Pursuant to the Policy Statement, a developer may demonstrate that approval of its application will not result in any undue discrimination or preference by conducting an open solicitation that broadly solicits interest in the project from potential customers and, after the solicitation process, demonstrating to the Commission that it has satisfied the solicitation, selection, and negotiation process criteria set forth in the Policy Statement.[19]

18. Additionally, applicants must issue broad notice of the project in a manner that ensures that all potential and interested customers are informed of the proposed project, such as by placing notice in trade magazines or regional energy publications.[20] Such

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[18] Application at 17 (citing *Chinook*, 126 FERC ¶ 61,134 at n.26).

[19] Policy Statement, 142 FERC ¶ 61,038 at P 16.

[20] *Id.* P 23.

notice should include developer points of contact, pertinent project dates, and sufficient technical specifications and contract information to inform interested customers of the nature of the project, including the following: (1) project size/capacity; (2) end points of the line; (3) projected construction and/or in-service dates; (4) type of line; (5) precedent agreement (if developed); and (6) other capacity allocation arrangements (including how the developer will address potential oversubscription of capacity).[21] The developer should also specify in the notice the criteria it plans to use to select transmission customers. In addition, the developer may also adopt a specific set of objective criteria it will use to rank prospective customers, provided it can justify why such criteria are appropriate. Finally, the Commission expects the developer to update its notice if there are any material changes to the nature of the project or the status of the capacity allocation process, in particular to ensure that interested entities are informed of any remaining available capacity.[22]

19. In the Policy Statement, the Commission stated that merchant developers must disclose the results of their capacity allocation process for approval under section 205 of the Federal Power Act (FPA).[23] Developers must demonstrate that the processes that led to the identification of transmission customers and the execution of the relevant contractual arrangements are consistent with the Policy Statement and the Commission's open access principles. Specifically, the developer should describe the criteria that were used to select customers, any price terms, and any risk-sharing terms and conditions that served as the basis for identifying transmission customers selected versus those that were not, as well as provide certain information listed in the Policy Statement in order to provide transparency to the Commission and interested parties.[24] The Commission emphasized in the Policy Statement that the information in the post-selection demonstration is an essential part of a merchant developer's request for approval of a capacity allocation process, and that the developer will have the burden to demonstrate that its process was in fact not unduly discriminatory or preferential, and resulted in rates, terms, and conditions that are just and reasonable.[25] The Commission allows developers discretion in the timing of requests for approval of capacity allocation processes. For example, a developer can seek approval of its capacity allocation approach after having completed the process of selecting customers in accordance with Commission policies.

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[21] *Id.* P 20.

[22] *Id.* PP 24-27.

[23] 16 U.S.C. § 824d (2012).

[24] Policy Statement, 142 FERC ¶ 61,038 at P 30.

[25] *Id.* P 32.

Alternatively, a developer can first seek approval of its capacity allocation approach, and then can demonstrate in a compliance filing filed in response to the Commission's order approving that approach that the developer's selection of customers was consistent with the approved selection process.

i. Plains and Eastern's Proposal

20. Plains and Eastern state that they will conduct an open solicitation process consistent with the Policy Statement and the process recently approved by the Commission for *Grain Belt*.[26] Plains and Eastern state that they have already spent over four years engaged in public outreach efforts to raise awareness of the Project, and that they commenced their open solicitation process by issuing a detailed notice on their website and distributing that notice through industry and stakeholder outlets. Plains and Eastern provide that the initial notice describes the technical aspects of the Project, the construction schedule and projected in-service date, and the customer selection screening factors and ranking criteria. Additionally, Plains and Eastern note that the notice provides potential customers with the option to request a preliminary meeting to discuss bid considerations and commits Plains and Eastern to host a conference at which all registered potential customers may ask questions; registered potential customers will also have access to a password-protected website administered by Plains and Eastern, which will provide further information as requested. Plains and Eastern state that the notice also identifies the key points of contact for the Project, including the Project's website address, where any subsequent changes from the information set forth in the initial notice will be prominently posted in a timely fashion.[27]

21. Plains and Eastern propose to initially screen customers according to the following selection criteria: (1) first mover status, i.e., a potential customer's commitment to pursue a customer agreement within Plains and Eastern's designated negotiation windows; (2) investment grade credit rating or other standards of creditworthiness; (3) firm transmission service reservation for at least five years; and (4) firm transmission service reservation for at least 50 MW of capacity.[28] Plains and Eastern state that, in response to feedback from potential customers, they may relax the customer selection

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[26] Application at 18 (citing *Grain Belt Express Clean Line LLC*, 147 FERC ¶ 61,098 (2014) (*Grain Belt*)).

[27] *Id.* at 19.

[28] *Id.* at 20.

criteria to accommodate more potential customers.[29] Plains and Eastern commit that any adjustments will be publicly noticed and equally applied to all potential customers.

22. Plains and Eastern then propose to rank potential customers for the initial and any subsequent phase of bilateral negotiations based on the following criteria: (1) level of creditworthiness; (2) early commitment in the Project's development cycle; (3) project risk-sharing through phased deposits or similar financial commitments during the Project's development cycle; (4) ability of customer to assist with the Project's development needs, including obtaining necessary siting approvals and governmental authorizations; (5) longer term of service; (6) larger capacity reservation; (7) ability to access Project converter stations to deliver or receive power; and (8) the material price terms contained in initial offers. Plains and Eastern also propose to use completion of generation development milestones and commercial operation date for generation as criteria specific to generation customers. Alternatively, they propose to use evidence of need for project capacity and the timing of transmission service commencement date as criteria specific to customers without generation such as power marketers or load serving entities.[30] Plains and Eastern explain that potential customers will not be required to satisfy all of the ranking criteria and that not all ranking criteria will be weighted the same, but that the criteria will be applied in a non-discriminatory manner, i.e., that customers with an identical ranking characteristic will be afforded the same weight for that particular characteristic (e.g., all customers seeking a 20-year term of service will be ranked the same on that specific factor).

23. Plains and Eastern commit to the following: (1) make a filing with the Commission upon completion of the open solicitation process; (2) disclose the results of the capacity allocation process; and (3) demonstrate that the process was consistent with the Policy Statement and the Commission's open access policies, including providing the post-selection demonstrations that they have satisfied the solicitation, selection, and negotiation process criteria specified in the Policy Statement.[31]

24. Plains and Eastern further state that they commit to maintain books and records for the Project that will comply with the Commission's Uniform System of Accounts in Part 101 of the Commission's regulations and will be subject to examination as required in Part 41 of the regulations, file financial statements and reports in accordance with Part

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[29] *Id.* at 21.

[30] *Id.* at 22-24.

[31] *Id.* at 29.

141.14 and 141.15 of the Commission's regulations, and employ an independent auditor to audit their books and records.[32]

ii. <u>Commission Determination</u>

25. We find Plains and Eastern's description of how they plan to broadly solicit interest from potential customers satisfactory. In addition to committing to engage in an open solicitation process, Plains and Eastern commit to filing one or more detailed post-allocation reports with the Commission pursuant to FPA section 205 disclosing the results of the capacity allocation process, and describing the process in sufficient detail to demonstrate its capacity allocation was consistent with its Commission-approved process and the Policy Statement. As described above, a developer has discretion as to the timing of its request for approval of the selection process. In this case, Plains and Eastern have proposed a detailed process it intends to use to select customers and allocate capacity. We find the proposed criteria will allow Plains and Eastern to distinguish among potential customers in a not unduly discriminatory or preferential manner, and we will allow Plains and Eastern to select and rank its customers according to these criteria, subject to Plains and Eastern complying with the commitments it has made. We note that Plains and Eastern must make a subsequent compliance filing providing the details necessary to provide full transparency as to how Plains and Eastern applied their screening and ranking factors, and the weight applied to each factor, to determine whether Plains and Eastern have followed the process approved herein. Thus, we will direct Plains and Eastern to make a compliance filing disclosing the results of the capacity allocation process within 30 days after the close of the open solicitation process. Further, we will also direct Plains and Eastern to file, through eTariff, a rate schedule for service under the Tariff for the transmission provider to which they hand over operational control, prior to commencement of service.

26. We acknowledge Plains and Eastern's commitment that, consistent with *Chinook*, once the Project has commenced operation, they will ensure they maintain books and records for the Project that comply with the Uniform System of Accounts found in Part 101 of the Commission's regulations,[33] subject to examination as required in Part 41 of 101 of the regulations,[34] and their books and records are audited by an independent

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[32] *Id.* at 27.

[33] 18 C.F.R. pt. 101 (2013).

[34] 18 C.F.R. pt. 41 (2013).

auditor.[35] These commitments will assist the Commission in carrying out its oversight role.

c. Factor Three: Undue Preference and Affiliate Concerns

27. In the context of merchant transmission, Commission 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 or solicitation, and/or customers that subsequently take service on the merchant transmission line. The Commission expects an affirmative showing that the affiliate is not afforded an undue preference, and the developer bears a high burden to demonstrate that the assignment of capacity to its affiliate and the corresponding treatment of nonaffiliated potential customers is just, reasonable, and not unduly discriminatory or preferential.[36]

i. Plains and Eastern's Proposal

28. Plains and Eastern state that they do not have any affiliates that currently plan to secure transmission service rights on the Project.[37] To the extent that an affiliate is allocated capacity, Plains and Eastern state that they commit to reporting so in their post-allocation compliance filing and that separate books and records will be maintained for any affiliate that does take service on the project. Plains and Eastern further state that they will turn over operational control of the project to an RTO or other existing third-party transmission provider and that all transactions will occur subject to the Project's Commission-approved rate schedule under the RTO's OATT or pursuant to another Commission-approved OATT.[38] Plains and Eastern also commit to file electric quarterly reports of their transactions as required of transmission providers, to comply with any applicable affiliate rules, and to abide by the Commission's Standards of Conduct to the extent any affiliate takes transmission service on the Project.

ii. Commission Determination

29. We acknowledge Plains and Eastern's commitment to engage in an open solicitation process and make a future filing with the Commission disclosing the results

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[35] *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) (*Tres Amigas*).

[36] Policy Statement, 142 FERC ¶ 61,038 at P 34.

[37] Application at 27.

[38] *Id.* at 28.

of the capacity allocation process and making an affirmative showing in sufficient detail to demonstrate that no affiliate has been afforded undue preference. In addition, we acknowledge Plains and Eastern's commitment to turn over operational control of their facilities to an RTO or other existing third-party transmission provider, file electric quarterly reports of their transactions as required of transmission providers, comply with any applicable affiliate rules, and abide by the Commission's Standards of Conduct to the extent any affiliate takes transmission service on the Project. We accept these commitments as addressing our affiliate preference concerns, subject to the Commission's approval of Plains and Eastern's subsequent compliance filing demonstrating that the assignment of capacity to any affiliate and the corresponding treatment of nonaffiliated potential customers is just, reasonable, and not unduly discriminatory or preferential.

d. Factor Four: Regional Reliability and Operational Efficiency

30. Merchant transmission projects, like cost-based transmission projects, are subject to mandatory reliability requirements.[39] Merchant transmission developers are required to comport with all applicable requirements of the North American Electric Reliability Corporation and any regional reliability council in which they are located.

i. Plains and Eastern's Proposal

31. Plains and Eastern commit to turn over operational control of the Project to an RTO or other existing third-party transmission provider.[40] Additionally, Plains and Eastern commit to participate in the reliability planning process and to comply with all applicable reliability requirements.

ii. Commission Determination

32. We acknowledge Plains and Eastern's commitment to turn over operational control of the Project to an RTO or other existing third-party transmission provider and to comply with all applicable reliability requirements. We also acknowledge and rely on Plains and Eastern's assertion that they are conducting interconnection studies with each of SPP, MISO, and TVA.[41] Accordingly, we find that Plains and Eastern have met the

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[39] *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).

[40] Application at 28.

[41] *Id.* at 8-10.

regional reliability and operational efficiency requirement, subject to Plains and Eastern's continued participation in the necessary regional planning processes.

C. Waiver Requests

1. Plains and Eastern's Proposal

33. Plains and Eastern request waiver of the following: (1) the full reporting 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; (2) the Form No. 1, Annual Report of Major Electric Utilities, Licenses and Others (Form No. 1) filing requirement; and (3) Part 141 relating to forms and reports, except sections 141.14 and 141.15.[42] Plains and Eastern state that they will not sell transmission service at cost-based rates and do not have captive customers.[43] Plains and Eastern state that the Commission has granted similar waiver requests to other merchant transmission owners seeking negotiated rate authority.[44] Plains and Eastern also request waiver of any other part of the Commission's regulations as necessary to grant the authorizations requested therein.

2. Commission Determination

34. Because Plains and Eastern are proposing a merchant transmission project wherein they would bear all the financial risks associated with the Project, would not have any captive customers, and would be charging negotiated rates, the regulations requiring the filing of cost-based data are not applicable. Accordingly, consistent with our prior orders, we will grant waiver of 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.[45]

35. The Commission will also grant Plains and Eastern's request for waiver of the Form No. 1 filing requirement and Part 141 relating to forms and reports, except sections

[42] *Id.* at 30.

[43] *Id.*

[44] *Id.* at 27 (citing *Lake Erie CleanPower Connector*, 144 FERC ¶ 61,203 (2013); *Chinook*, 126 FERC ¶ 61,134 at PP 68, 69).

[45] *Hudson Transmission*, 135 FERC ¶ 61,104 at P 42; *Tres Amigas*, 130 FERC ¶ 61,207 at P 103; *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*).

141.14 and 141.15. The Commission has previously granted waiver of the Form No. 1 filing requirement to other merchant transmission owners.[46]

The Commission orders:

(A) Plains and Eastern are hereby granted authority to sell transmission rights on their proposed merchant transmission project at negotiated rates, subject to the Commission's acceptance of the compliance filing and rate schedule directed in Ordering Paragraphs (B) and (C) below, as discussed in the body of this order.

(B) Plains and Eastern are hereby directed to make a compliance filing disclosing the results of the capacity allocation process within 30 days after the close of the open solicitation process, as discussed in the body of this order.

(C) Plains and Eastern are hereby directed to file, prior to commencement of service, a rate schedule for service under the Tariff for the transmission provider to which they hand over operational control, as discussed in the body of this order.

(D) Plains and Eastern's request 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, of the Form No.1 filing requirement, and of Part 141 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)

Kimberly D. Bose,
Secretary.

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[46] *Neptune Regional Transmission System, LLC*, 139 FERC ¶ 61,110, at P 12 (2012); *Wyoming*, 127 FERC ¶ 61,125 at P 65; *Linden*, 119 FERC ¶ 61,066 at P 44; *Montana Alberta Tie Ltd.*, 116 FERC ¶ 61,071, at P 66 (2006).