

139 FERC ¶ 61,110  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Neptune Regional Transmission System, LLC

Docket No. ER12-1268-000

ORDER ON WAIVER

(Issued May 11, 2012)

1. On March 14, 2012, Neptune Regional Transmission System, LLC (Neptune) filed a request for waiver of the Commission's cost-based accounting and reporting requirements in Parts 41 (except sections 41.1 to 41.8), 101, and 141 (except sections 141.14 and 141.15) of the Commission's regulations.<sup>1</sup> The Commission grants in part and denies in part Neptune's request for waiver.

**I. Background**

2. Neptune is an independent developer-owner of a 65-mile, high-voltage, direct current undersea transmission cable (Neptune Line). The Neptune Line entered service in 2007 interconnecting PJM Interconnection, L.L.C. (PJM) and New York Independent System Operator, Inc. (NYISO) transmission systems.<sup>2</sup> On July 27, 2001, the Commission granted Neptune's application for authority to provide transmission service over the line at negotiated rates.<sup>3</sup> In an open season process, the Long Island Power Authority (LIPA) obtained 100 percent of the capacity on the Neptune Line. LIPA signed a twenty-year contract to purchase the capacity, at negotiated rates, for a twenty-

---

<sup>1</sup> 18 C.F.R. Parts 41, 101, & 141 (2011).

<sup>2</sup> Neptune Filing at 2-3. The Neptune Line interconnects at Jersey Central Power & Light Company's Raritan River substation in Sayreville, New Jersey, and at Long Island Light Company's substation near New Cassel, New York.

<sup>3</sup> See *Neptune Reg'l Transmission Sys., LLC*, 96 FERC ¶ 61,147 (2001) (*Neptune Reg'l*), *order on reh'g*, 96 FERC ¶ 61,326 (2001), *order on clarif.*, 98 FERC ¶ 61,140 (2002), *order on modification & clarif.*, 103 FERC ¶61,213 (2003) (*Neptune Reg'l II*).

year term beginning in June 2007. Neptune was developed, and is managed, by the same principals as the Hudson Transmission Project.<sup>4</sup>

3. Neptune maintains that it is a member of PJM, and it is a signatory to the PJM Operating Agreement and the Consolidated Transmission Owners Agreement. Pursuant to these agreements, Neptune states it has turned operational control of the Neptune Line over to PJM, and transmission service over the Neptune Line is provided by PJM pursuant to Schedule 14 of the PJM Tariff.<sup>5</sup>

## II. Waiver Requests

4. Neptune requests the Commission grant waivers of the Commission's cost-based accounting and periodic reporting requirements in Parts 41 (except sections 41.1 to 41.8), 101 and 141 (except sections 141.14 and 141.15) of the Commission's regulations. Neptune states Part 41 pertains to adjustments to accounts and reports and Part 101 pertains to the Commission's Uniform System of Accounts for public utilities. Neptune also states Part 141 sets forth the Commission's reporting requirements for public utilities.

5. Neptune maintains the Commission's established policy is to grant requests for waiver of the Commission's cost-based rate data requirements in Parts 41, 101, and 141 of the Commission's regulations by merchant transmission companies. Neptune reasons that, as the Commission explained in *Hudson Transmission*, "the regulations requiring the filing of cost-based data are not applicable" to "a merchant transmission developer charging negotiated rates."<sup>6</sup> Neptune asserts that the Uniform System of Accounts requires it to restructure and artificially translate all of its data, which creates a significant and undue burden with no corresponding benefit to any of its customers. Neptune further

---

<sup>4</sup> Neptune Filing at 4. Neptune is owned by Neptune Power Ventures, LLC, Atlantic Energy Partners, LLC, California Public Employees Retirement System, and Starwood Energy Investors, LLC.

<sup>5</sup> Neptune Filing at 3. *See PJM Interconnection, L.L.C.*, Docket Nos. ER07-632-000 and ER07-880-000 (May 3, 2007) (unpublished letter order) (accepting a new Schedule 14 to the PJM Tariff).

<sup>6</sup> Neptune Filing at 4-5 (citing *Hudson Transmission Partners, LLC*, 135 FERC ¶ 61,104, at P 42 (2011) (*Hudson Transmission*) (granting waiver of certain Commission regulations)). Neptune states that in Hudson Transmission's application for negotiated rate authority, it informed the Commission that its merchant project was being constructed under a fixed-price, turn-key engineering, procurement, and construction contract, and that consequently, Hudson Transmission did not receive its costs in a form conducive to the Commission's Uniform System of Accounts.

asserts that customers who are charged negotiated rates do not need access to cost-of-service data in order to ensure their rates are reasonable.

6. Neptune states that the Commission has granted waivers of the Commission Form No. 1 filing requirement and other cost-based data requirements to merchant transmission companies in a long line of cases.<sup>7</sup> Neptune argues that, in granting these waivers, the Commission has emphasized that neither the Commission, nor the customers of merchant transmission companies, need the cost-based rate data to ensure that rates are just and reasonable,<sup>8</sup> because merchant transmission companies charge negotiated rates and do not have captive customers.<sup>9</sup>

7. Neptune contends that good cause similarly exists here to grant the requested waivers because, like the merchant transmission companies that have been granted waivers of the Commission's cost-based accounting and reporting requirements, Neptune is authorized to provide transmission service at negotiated rates and does not have captive customers.<sup>10</sup> Moreover, Neptune asserts that it shares common features with Hudson Transmission that support granting the requested waivers. Neptune states, the two entities, in particular, have the same principals and a similar contract structure, and both connect the PJM and NYISO transmission systems. Therefore, Neptune argues, granting the requested waivers is consistent with Commission precedent.

8. In addition, Neptune states no affiliates participated in its open season, and the full capacity of the Neptune Line was sold to LIPA, an unaffiliated entity. Neptune argues compliance with these accounting and reporting requirements is not necessary to address

---

<sup>7</sup> Neptune Filing at 6 (citing *Champlain Hudson Power Express, Inc.*, 132 FERC ¶ 61,006, at P 59 (2010); *Tres Amigas LLC*, 130 FERC ¶ 61,207, at P 103 (2010); *Chinook Power Transmission, LLC*, *Zephyr Power Transmission, LLC*, 126 FERC ¶ 61,134, at PP 68-69 (2009) (*Chinook*); *Wyo. Colo. Intertie, LLC*, 127 FERC ¶ 61,125, at PP 62, 65 (2009) (*Wyoming*); *Montana Alberta Tie Ltd.*, 116 FERC ¶ 61,071, at PP 64, 66 (2006) (*MATL*); *Cross-Sound Cable Co., LLC*, 108 FERC ¶ 61,277, at PP 8-9 (2004) (*CSC*)).

<sup>8</sup> Neptune Filing at 6 (citing *CSC*, 108 FERC ¶ 61,277 at P 8).

<sup>9</sup> Neptune Filing at 6 (citing *MATL*, 116 FERC ¶ 61,071 at P 66; *Wyoming*, 127 FERC ¶ 61,125 at P 65; *Chinook*, 126 FERC ¶ 61,134 at P 69; *CSC*, 108 FERC ¶ 61,277 at P 8).

<sup>10</sup> Neptune Filing at 7 (citing *Sagebrush, a California Partnership*, 132 FERC ¶ 61,234, at P 34 (2010) (rejecting a request for waiver of the Commission's cost-based accounting and reporting requirements by a transmission provider selling at cost-based rates)).

affiliate abuse because LIPA has subscribed the full capacity of the line for a twenty-year term that began in June 2007.

9. Neptune states that, because it charges negotiated rates with full market risk and does not charge cost-of-service rates, maintaining cost-of-service data in a Uniform System of Accounts format would serve no purpose. Neptune argues that maintaining this data would not benefit its customers, because, as customers paying negotiated rates, they do not need access to Neptune's cost-of-service data to ensure rates are just and reasonable. In addition, Neptune argues that maintaining this data would not help or prove useful to it, the transmission provider.

10. Finally, Neptune states that it commits to continue to keep separate books and records for the Neptune Line, to maintain its books and records in accordance with generally accepted accounting principles, and to make its books and records available for Commission inspection, consistent with the Commission's directives in *Hudson Transmission*.

### **III. Notice of Filing and Responsive Pleadings**

11. Notice of Neptune's March 14, 2012 Filing was published in the *Federal Register*, 77 Fed. Reg. 16,827 (2012), with interventions and protests due on or before April 4, 2012. None was filed.

### **IV. Commission Determination**

12. The Commission grants Neptune's request for waiver of Part 141 (with the exception of sections 141.14 and 141.15), including the Form No. 1 filing requirement. The Commission has previously granted waiver of the Form No. 1 filing requirement to merchant transmission owners.<sup>11</sup> The Commission notes that this waiver in no way affects the requirements to file electronic quarterly reports, however.

13. The Commission declines to grant Neptune's request for waiver of Parts 41 and 101. The Commission finds it is important for all transmission-owning utilities, including merchant transmission owners, to maintain their books and records in accordance with the Uniform System of Accounts should the Commission require Neptune to produce this information in the future. This finding is consistent with the Commission's established policy of denying waiver of Parts 41 and 101 to merchant

---

<sup>11</sup> *Wyoming*, 127 FERC ¶ 61,125 at P 65; *Linden*, 119 FERC ¶ 61,066 at P 44; *MATL*, 116 FERC ¶ 61,071 at P 66.

transmission owners in *TransEnergie U.S. Ltd., TransEnergie U.S. Ltd. and Hydro One Delivery Services Inc., Northeast Utilities, and Neptune Reg'l.*<sup>12</sup>

14. While the Commission departed from this policy by granting waiver of Parts 41 and 101 to a merchant transmission owner in *Hudson Transmission*,<sup>13</sup> upon further review the Commission concludes that this departure from prior policy was not warranted. Consistent with previous orders mentioned above, the Commission finds that it is appropriate to deny waiver of these provisions to merchant transmission owners in order to facilitate regulatory oversight. Accordingly, Neptune is required to maintain its books and records in accordance with the Uniform System of Accounts, consistent with Part 101 of the Commission's regulations, and Neptune is subject to examination by the Commission pursuant to Part 41 of the Commission's regulations.

The Commission orders:

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

(B) The Commission denies Neptune's request for waiver of Parts 41 and 101 of the Commission's regulations.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

---

<sup>12</sup> *TransEnergie U.S. Ltd.*, 98 FERC ¶ 61,147, at 61,457 (2002); *TransEnergie U.S. Ltd. and Hydro One Delivery Services Inc.*, 98 FERC 61,144, at 61,502 (2002); *Ne. Utils.*, 98 FERC ¶ 61,310, at 62,331; *Neptune Reg'l*, 96 FERC ¶ 61,147 at Ordering Para. (G).

<sup>13</sup> *Hudson Transmission*, 135 FERC ¶ 61,104 at P 43.