

126 FERC ¶ 61,134
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Acting Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Chinook Power Transmission, LLC

Docket Nos. ER09-432-000

Zephyr Power Transmission, LLC

ER09-433-000

(Not Consolidated)

ORDER AUTHORIZING PROPOSALS AND GRANTING WAIVERS

(Issued February 19, 2009)

1. On December 19, 2008, in Docket No. ER09-432-000, Chinook Power Transmission, LLC (Chinook) filed a request for authorization to charge negotiated rates for transmission rights on a proposed merchant transmission project¹ and also requests waiver of certain Commission regulations. Also on December 19, 2008, in Docket No. ER09-433-000, Zephyr Power Transmission, LLC (Zephyr) filed a request for authorization to charge negotiated rates on a proposed merchant transmission project and also requests waiver of certain Commission regulations. Both Chinook and Zephyr filed their requests pursuant to section 205 of the Federal Power Act (FPA)² and section 35 of the Commission's regulations.³ In this order, the Commission authorizes both Chinook and Zephyr to charge negotiated rates for transmission rights on the respective projects, subject to the conditions discussed herein. The Commission also grants Chinook's and Zephyr's requests for waiver, as discussed below.⁴

¹ Merchant transmission projects are distinguished from traditional public utilities in that the developers of merchant projects assume all of the market risk of a project and have no captive pool of customers from which to recoup the cost of the project.

² 16 U.S.C. § 824d (2006).

³ 18 C.F.R. Part 35 (2008).

⁴ For the purposes of our review, Chinook's and Zephyr's applications to charge negotiated rates for transmission rights on the respective projects are identical in all material respects. Therefore, we address the applications together. However, we do not consolidate the two dockets.

I. Background

2. Chinook proposes to develop a 1,000-mile, 500 kV high voltage direct current (DC) transmission line that will originate near Harlowton, Montana, and terminate south of Las Vegas, Nevada. Zephyr proposes to develop a 1,100-mile, 500 kV high voltage DC transmission line that will originate near Medicine Bow, Wyoming, and terminate south of Las Vegas, Nevada. The proposed transmission lines, which are both expected to be in service by late 2014, will run parallel to each other along the southern portions from Borah, Idaho to the end point south of Las Vegas, Nevada. Each transmission line will be able to deliver approximately 3,000 MW of generation to the southwestern United States. Both Chinook and Zephyr, which have no captive ratepayers, will undertake construction as merchant transmission developers and will assume full market and regulatory risk for their respective projects.

3. According to Chinook and Zephyr, the respective projects will be beneficial to the western power grid by providing transmission capacity to deliver renewable energy from wind generation projects in Montana and Wyoming to load centers in the southwestern United States. Chinook and Zephyr state that the projects will help southwestern states meet renewable portfolio standard requirements.⁵ Additionally, Chinook and Zephyr note that high-voltage DC transmission is the most cost-effective, efficient and environmentally favorable way of moving large quantities of electricity over long distances due to lower line costs, fewer energy losses, and smaller towers required as compared to alternating current (AC) systems. Chinook and Zephyr state that several years have been spent developing their proposed routes to avoid populated areas, tribal lands, military bases and environmentally sensitive areas.⁶

4. Chinook and Zephyr state that they are Delaware limited liability companies established for the purpose of developing and financing their respective projects. Chinook and Zephyr also note that they are wholly-owned subsidiaries of Northern Lights, Inc., which itself is a wholly-owned, indirect subsidiary of TransCanada Corporation. Chinook and Zephyr assert that they do not own any electric transmission or generation facilities; however, affiliates of Chinook and Zephyr own interstate natural gas and oil pipelines and electric generation facilities, none of which are located in close proximity to the Chinook and Zephyr projects. According to Chinook and Zephyr, no

⁵ Chinook and Zephyr, December 19, 2008 Applications, at 6 (citing Cal. Exec. Order No. S-14-08 (2008) (“On November 19, 2008, in an effort to reduce carbon emissions, California’s Governor Arnold Schwarzenegger signed an executive order requiring the State’s utilities to obtain one-third of their electricity from renewable sources by 2020.”)).

⁶ Chinook and Zephyr state that more than 75 percent of each route is on federal lands.

electric generation affiliate is located, or currently does business, in any state in which the respective projects will be located. Chinook and Zephyr also state that neither project will interconnect with any existing facilities owned by an affiliate of Chinook or Zephyr and that neither Chinook nor Zephyr anticipate that any affiliate will subscribe to capacity on their respective projects.

II. Chinook's and Zephyr's Applications

5. Chinook and Zephyr explain that they have completed their respective initial project planning and engineering, including but not limited to, preliminary line design, conductor selection, foundation design, technology assessment and review, and cost estimates. They also state that they have provided indicative tariffs to potential customers. Both Chinook and Zephyr state that they have submitted their formal right-of-way applications to the U.S. Bureau of Land Management, and they have presented their plans to construct their respective projects in several Western Electricity Coordinating Council (WECC) forums. Chinook and Zephyr state that they intend to formally initiate the WECC regional planning process in February 2009. Also, at some point in the future, Chinook and Zephyr will initiate WECC's Three Phase Rating Process, which will address the reliability impacts of their respective projects by, among other things, identifying transmission capacity ratings and reliability operating conditions. Additionally, Chinook and Zephyr state that their respective projects are also included in the Northern Tier Transmission Group's Annual Planning Report.

6. Chinook and Zephyr explain that the respective projects are located in a region where there currently is no regional transmission organization (RTO) or independent system operator (ISO). Therefore, Chinook and Zephyr cannot turn over operational control to an RTO or ISO. Because of this, Chinook and Zephyr will each submit an Open Access Transmission Tariff (OATT) under Order No. 890.⁷ If an RTO or ISO forms in the projects' footprints, Chinook and Zephyr each commit to making a filing with the Commission addressing whether it is appropriate for Chinook and/or Zephyr to join or participate in such RTO or ISO. Chinook and Zephyr state that there also is no authorized market monitor for the region in which their respective projects will operate. To the extent that one is established, Chinook and Zephyr commit to cooperating and supplying data to that market monitor to the same extent that is required of others.

7. Chinook and Zephyr next state that the proposed OATTs will provide for tradable secondary transmission rights, and that any initial sale of transmission rights will be

⁷ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, at P 814, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 73 Fed. Reg. 39,092 (July 8, 2008), 123 FERC ¶ 61,299 (2008).

structured to ensure the availability of secondary transmission rights. Currently, neither Chinook nor Zephyr has an Open Access Same-time Information System (OASIS) on which to trade secondary transmission rights, but Chinook and Zephyr both commit to having an OASIS prior to commercial operation and, in the meantime, will create an internet website.

8. Chinook and Zephyr state that the projects' transmission facilities will not impair pre-existing property rights to use the transmission grid of interconnected RTOs⁸ or utilities. This is accomplished in two ways: (1) the rights for transmission service on the respective projects will be for point-to-point service from one end of a project to the other and will not extend beyond the points of interconnection on either project; and (2) WECC's Three Phase Rating Process will be completed and thereby ensure that the capacity rights of other systems are protected. Chinook and Zephyr explain that to secure point-to-point service beyond each of the project's terminals, a customer will have to arrange for such service with other interconnected transmission providers.

9. In addressing affiliate concerns, Chinook and Zephyr state that it is not anticipated any affiliates will participate in either Chinook's or Zephyr's open season. Further, Chinook and Zephyr contend that none of the transmission systems to which the respective projects will be interconnected are currently owned by an affiliate of either entity. Finally, to the extent that Chinook or Zephyr deal with affiliates, they commit to maintaining separate books of account and records in accordance with the Commission's regulations and will make these books and records available to the Commission for inspection. Chinook and Zephyr also commit to complying with the Standards of Conduct, any other applicable affiliate rules, and they agree to file quarterly reports of their transactions as required of transmission providers.

A. Presubscription and Open Season

10. Chinook and Zephyr claim that millions of dollars have been committed during the initial development phase of their respective projects. To help defray development costs, Chinook and Zephyr have each entered into an agreement with a wind generation developer that will share a portion of the initial development costs and become an "anchor customer" subject to successful negotiation of a precedent agreement.

11. In their applications, Chinook and Zephyr state that extensive discussions were held with numerous prospective customers to establish commercial support from creditworthy counterparties for these projects. Chinook and Zephyr further state that although these discussions confirmed a need for the projects, generators and purchasers of energy were reluctant to engage in serious discussions with either Chinook or Zephyr

⁸ Both Chinook and Zephyr note that at present, the respective projects will not directly interconnect with any RTO-operated transmission facilities.

until these projects had demonstrable commercial support. Chinook and Zephyr concluded that, given the commercial realities and the recent financial crisis in the United States, these transmission projects would not advance without anchor customers.

12. In order to ensure commercial viability, Chinook and Zephyr concluded that presubscription of at least 50 percent of each of the projects' 3,000 MW of capacity was needed prior to conducting an open season. They assert that the proposed 1,500 MW presubscription strikes a reasonable balance between satisfying commercial objectives and still providing all other potential customers an opportunity to bid for capacity in the open season.⁹ Chinook and Zephyr contend that a precedent agreement with one large customer will simplify negotiations and move the projects along in a timely fashion. Conversely, they claim that presubscription by multiple smaller entities would place Zephyr and Chinook at risk that one or more entities could back out, which would leave Chinook and Zephyr contractually committed to other entities but without sufficient commercial support to justify moving forward with the projects. Both Chinook and Zephyr state that their willingness to advance the projects is based on Commission approval of negotiated rate authority for this "anchor customer" construct.

13. In August 2008, Zephyr and Chinook solicited and received non-binding expressions of interest for service on the respective projects from an undisclosed number of potential customers.¹⁰ They subsequently provided estimated rates to interested parties. Chinook and Zephyr then entered into serious discussions with the few entities that had the ability to do the following: (1) presubscribe 1,500 MW of each projects' capacity; (2) share initial development costs; (3) meet appropriate credit requirements; and (4) execute an agreement in the timeframe necessary to advance the projects in a timely manner. Only one developer met these criteria and agreed to enter into a precedent agreement for 1,500 MW of capacity on each line. Chinook and Zephyr state that the respective anchor customers are a wind generation company but did not disclose their identities. Chinook and Zephyr state that the respective anchor customers' precedent agreements will be used as a model for the open season customers' precedent agreements. Additionally, Chinook and Zephyr confirm that any customer in the open

⁹ Chinook and Zephyr state that precedent agreements will be negotiated at arms' length with their respective anchor customers and will commit the anchor customers to pay a negotiated rate for 1,500 MW of guaranteed firm transmission capacity on each line for a minimum term of 25 years. Each anchor customer's capacity is "guaranteed" to the extent that such capacity is not subject to pro-ration in the event that bids for capacity during the open season exceed available capacity. Additionally, each project's anchor customer will commit to share the costs for the three-year development phase, including permitting, siting, WECC path rating, and other development activities for each project.

¹⁰ Chinook and Zephyr assert that confidentiality agreements were entered into with more than 30 parties for these projects.

season willing to commit to a 25-year term for any megawatt amount will receive the same rate and terms as the anchor customer.

14. Chinook and Zephyr will each hold an open season for the remaining 1,500 MW of capacity on each line.¹¹ According to Chinook and Zephyr, the auctioned capacity would constitute the largest open season for merchant transmission capacity in the Western Interconnection to date and, therefore, would provide potential customers ample opportunity to bid for capacity. They state that transmission rights will be offered for up to the full capacity of the lines and will be offered for transmission of energy only.¹² If there are more successful bids than available capacity, Chinook and Zephyr will either prorate the awarded open-season capacity rights or enlarge the projects, if feasible.

15. Chinook and Zephyr state that the specific rules for the open season, detailed bidding guidelines, the respective *pro forma* OATTs, estimated rates, and the precedent agreements will be posted on their internet websites and forwarded to all parties that previously expressed interest in the projects or submitted non-binding expressions of interest. Additionally, Chinook and Zephyr commit to making public announcements in appropriate trade publications in advance of holding the open season. Chinook and Zephyr point out that a successful bidder must, among other things, meet reasonable credit requirements, identify the amount of transmission capacity and the length of term desired, and commit to a standard form precedent agreement supplied by Chinook or Zephyr.

16. Chinook and Zephyr will each retain an independent third party to evaluate and rank the bids based on the greatest total net present value to Chinook or Zephyr, including the economic impact of any proposed changes to the standard form precedent agreement. Once the agreements have been executed, Chinook and Zephyr will post on their internet websites the winning bidder's name, quantity, the expiration date of the transmission rights awarded, and the contact information of the bidder for purposes of potential resale of transmission rights. Chinook and Zephyr state that the results of the open season will be reported to the Commission.

B. Negotiated Rate Authority and Market Power

17. Chinook and Zephyr contend that they lack market power and will not be able to exercise market influence over prospective customers for the projects. According to Chinook and Zephyr, there are no captive customers, and there is no RTO or ISO in the

¹¹ Chinook and Zephyr note that 1,500 MW of DC capacity is comparable to the capacity of a single-circuit 500 kV AC transmission line.

¹² Chinook and Zephyr do not anticipate that either project will provide network or ancillary services.

region whose members will absorb any costs from the proposed projects. Thus, they state that only willing potential customers will seek transmission rights on these lines. Chinook and Zephyr also assert that there are multiple proposed projects in the Western Interconnection that are competing with the projects, and potential customers will not subscribe to a project that does not offer competitive prices for transmission. They state that this competition ensures that the ensuing transmission rates will be just and reasonable.

18. Chinook and Zephyr also claim that customers will be protected by the availability of transmission services at cost-based rates by virtue of incumbent transmission providers' obligations to expand, upon request, transmission capacity in or near the areas that will be served by Chinook and Zephyr. For this reason, Chinook and Zephyr assert that customers are likely to pay prices that are no higher than neighboring transmission providers' cost of expansion. Additionally, Chinook and Zephyr assert that given the anchor customer selection processes and open season commitments, transmission rights will be allocated in an open, fair and transparent manner at a price approximating the current cost of construction, cost of operation, and cost of capital.

III. Notices and Interventions

19. Notice of Chinook's filing was published in the *Federal Register*, 74 Fed. Reg. 1672 (2009), with interventions and protests due on or before January 9, 2009. Iberdrola Renewables, Inc. and PacifiCorp filed motions to intervene. The American Wind Energy Association (AWEA), Gaelectric LLC (Gaelectric), and Horizon Wind Energy LLC (Horizon) filed motions to intervene and comments.¹³ Great Basin Transmission, LLC (Great Basin) filed a motion for leave to intervene out-of-time and supporting comments.

20. Notice of Zephyr's filing was published in the *Federal Register*, 74 Fed. Reg. 1672 (2009), with interventions and protests due on or before January 9, 2009. Iberdrola Renewables, Inc. and PacifiCorp filed motions to intervene. AWEA, Gaelectric, and Horizon filed motions to intervene and comments.¹⁴ Shell WindEnergy Inc. (Shell WindEnergy), Wyoming Infrastructure Authority (WIA), Wyoming Power Producers Coalition (WPPC), and Great Basin filed a motion for leave to intervene out-of-time and supporting comments.

¹³ Gaelectric and Horizon filed comments in support of Chinook's application. AWEA filed comments in support of the anchor-customer model, but AWEA does not take a position with respect to Chinook's application.

¹⁴ Gaelectric and Horizon filed comments in support of Zephyr's application. AWEA filed comments in support of the anchor-customer model, but AWEA does not take a position with respect to Zephyr's application.

21. In its comments, AWEA urges the Commission to consider allowing merchant transmission developers, on a case-by-case basis, to enter into bilateral contracts with anchor customers for the purposes of pre-subscribing a limited percentage of the capacity on new transmission lines in advance of the developers conducting an open season.

22. Because Chinook and Zephyr seek approval to use an anchor tenant for the projects, AWEA states that its comments in the technical conference on “Transmission Barriers to Entry” (Docket No. AD08-13-000) are relevant for the Commission’s consideration in these two dockets. In its technical conference comments, AWEA states that approval of the anchor customer model is a pro-active transmission policy that also could help resolve the financing dilemma (described more fully in the discussion section of this order). AWEA therefore encourages the Commission to allow for anchor customers when properly supported.

23. Gaelectric states that it supports both Chinook’s and Zephyr’s petitions. According to Gaelectric, Chinook’s and Zephyr’s projects will provide substantial benefits to the western power grid and encourage the development of renewable energy projects, such as Gaelectric’s wind generation project, while at the same time minimizing environmental and cost concerns. In addition, Gaelectric states that granting Chinook’s and Zephyr’s petitions will facilitate the construction of new, much-needed transmission facilities.

24. Horizon states that it supports Chinook’s and Zephyr’s proposal to presubscribe 50 percent of the respective capacity to an anchor customer and allocate the remaining 50 percent in an open season because those customers who are willing to invest early (and therefore take on the most risk) in a transmission line would receive rights to capacity on the line that reflect the financial commitment. Chinook’s and Zephyr’s proposals would encourage private investment in transmission infrastructure, which is crucial to improving the transmission grid nationwide. Horizon adds that the Commission has approved a similar concept for the development of interstate natural gas pipelines where there is significant planned resource development but insufficient transmission capacity. Horizon states that the Commission should approve the concept in this case.

25. In its comments, Great Basin states that merchant transmission developers face two related types of barriers at the project development stage. First, according to Great Basin, merchant transmission developers must make significant upfront investments in advance of conducting an open season, and in order to finance these investments, merchant transmission developers need to obtain commercial support from potential customers as early as possible. Second, Great Basin states that merchant transmission developers face another obstacle in obtaining this commercial support. Great Basin explains that load-serving entities (LSEs) and state regulators frequently will not support proposals to build new transmission until the developer has obtained generators’ support. Likewise, Great Basin states that generators are unwilling to provide support in the absence of LSE support. Great Basin states that the anchor customer model lowers both of these barriers to entry by allowing the merchant transmission developer to share the

upfront development costs with the anchor customers and by allowing the merchant transmission developer to rely on the precedent agreements to demonstrate to LSEs that the project has support.

26. Great Basin also states that the Commission has permitted a similar anchor shipper model for natural gas pipelines and that merchant transmission developers face similar risks and difficulties in obtaining financing.¹⁵ Therefore, Great Basin submits that merchant transmission developers should be permitted to use a similar anchor customer model.

27. Great Basin believes that the Commission should not adopt a detailed regulatory framework in Chinook's and Zephyr's proceedings that will apply to all such proposals in the future. In particular, Great Basin urges the Commission not to adopt Chinook's and Zephyr's proposals to contract 50 percent of its capacity to an anchor customer as the absolute maximum amount of capacity that may be pre-subscribed to anchor customers in future negotiated rate applications. Great Basin submits that there is no reason that anchor customers should not be permitted to contract for all of a project's transmission capacity, provided that the project is to be built by an independent developer and the precedent agreement is negotiated at arms' length with unaffiliated anchor customers. Great Basin notes that neither Chinook, Zephyr, nor any other party has proposed that the Commission impose such a limit, and Great Basin urges the Commission not to do so here.

28. Shell WindEnergy states that it supports Zephyr's petition. Shell WindEnergy further states that by granting the petition, the Commission will facilitate construction of new, much-needed transmission infrastructure in the western United States. Shell WindEnergy states that the Commission should waive strict application of the requirement that all transmission capacity of a merchant transmission project initially be allocated in an open season. Shell WindEnergy believes Zephyr's petition strikes the appropriate balance between commercial realities and the Commission's open access policies.

29. WIA supports the anchor customer model, asserting that Zephyr's project will provide substantial benefits to the state of Wyoming and to the western power grid. WIA states that allowing companies to enter into bilateral contracts with anchor customers is crucial to encouraging the development of new power transmission infrastructure from wind-rich areas like Wyoming to markets in the Southwest.

30. WPPC states that Zephyr's proposed transmission line is a crucial step toward making use of clean and renewable energy available to areas with growing electricity

¹⁵ Citing *Delta Pipeline Co.*, 52 FERC ¶ 61,004, at 61,051 n.30 (1990); *Garden Banks Gas Pipeline, LLC*, 78 FERC ¶ 61,066, at 61,236 (1997).

demand. WPPC states that Zephyr's approach to developing its proposed transmission line would encourage private investment in needed transmission infrastructure, which is crucial to improving the transmission grid nationwide.

IV. Discussion

A. Procedural Matters

31. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding in which such notices and motions were filed.

32. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.214(d) (2008), the Commission will grant the late-filed motions to intervene in Docket No. ER09-433-000 from Shell WindEnergy, WIA, and WPPC, given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay. Similarly, the Commission will grant the late-filed motions by Great Basin in both Docket Nos. ER09-432-000 and ER09-433-000, given its interest in the proceedings, the early stage of the proceedings, and the absence of undue prejudice or delay.

B. Substantive Matters

33. At present, the Commission has nearly 10 years of experience in evaluating merchant transmission owners' requests to charge negotiated rates to determine whether they comport with section 205 of the FPA.¹⁶ Over the course of a number of proceedings, the Commission developed 10 criteria to guide its analysis in making a determination as to whether negotiated rate authority would be just and reasonable for a given merchant transmission project.¹⁷ The Commission has not used these criteria as a rigid and definitive test to determine whether to grant merchant transmission projects negotiated rate authority. Indeed, some of these criteria may not be applicable in all situations. Thus, the 10 criteria have served as guideposts in determining whether to grant negotiated rate authority in the context of a particular merchant transmission project.

¹⁶ See *TransEnergie U.S., Ltd.*, 91 FERC ¶ 61,230 (2000) (*TransEnergie*) (granting the first merchant transmission owner's application for negotiated rate authority in June of 2000).

¹⁷ *TransEnergie*, 91 FERC ¶ 61,230; *Neptune Regional Transmission System, LLC*, 96 FERC ¶ 61,147, at 61,633 (2001) (*Neptune*); *Northeast Utilities I*, 97 FERC ¶ 61,026 (2001); *Northeast Utilities Service Co.*, 98 FERC ¶ 61,310 (2002) (*Northeast Utilities II*).

34. These 10 criteria include the following: (1) that the merchant transmission facility must assume full market risk; (2) that the service should be provided under the OATT of the RTO or ISO that operates the merchant transmission facility and that operational control be given to that RTO or ISO; (3) that the merchant transmission facility should create tradable firm secondary transmission rights; (4) that an open season process should be employed to initially allocate transmission rights; (5) that the results of the open season should be posted on the OASIS and filed in a report to the Commission; (6) that affiliate concerns should be adequately addressed; (7) that the merchant transmission facility not preclude access to essential facilities by competitors; (8) that the merchant transmission facilities should be subject to market monitoring for market power abuse; (9) that physical energy flows on merchant transmission facilities should be coordinated with, and subject to, reliability requirements of the relevant RTO or ISO; and (10) that merchant transmission facilities should not impair pre-existing property rights to use the transmission grids of inter-connected RTOs or utilities.¹⁸

35. The Commission utilized these criteria to evaluate merchant transmission owners' negotiated rate applications because they were tailored to the unique and narrow circumstances of these early proposals.¹⁹ Significantly, one of the "narrow circumstances" present in all three cases was that the merchant transmission projects were located in or adjacent to RTOs and ISOs.

36. More recently, the Commission has addressed applications for negotiated rate authority outside the context of an RTO or ISO.²⁰ In *Sea Breeze*, the Commission granted a request to charge negotiated rates for a merchant line that would run underneath the Strait of Juan de Fuca between Washington State and British Columbia, Canada.²¹ Subsequently, in *MATL*, the Commission granted a request to charge negotiated rates for a merchant line that would run from Lethbridge, Alberta, Canada, to Great Falls, Montana.²² In both cases, the merchant transmission owners presented their applications in terms of the 10 criteria, while at the same time noting the factual differences between their filings and the earlier RTO/ISO related filings mentioned above. Accordingly, in both cases, the Commission either waived some of the criteria or was flexible in applying

¹⁸ See *Sea Breeze Pacific Juan de Fuca Cable, LP*, 112 FERC ¶ 61,295, at P 16 (2005) (*Sea Breeze*) (citing *Northeast Utilities Service Co.*, 97 FERC ¶ 61,026 (2001) (*Northeast Utilities I*)).

¹⁹ *Id.*; *Neptune*, 96 FERC at 61,633.

²⁰ *Sea Breeze*, 112 FERC ¶ 61,295; *Montana Alberta Tie, Ltd.*, 116 FERC ¶ 61,071 (2006) (*MATL*).

²¹ *Sea Breeze*, 112 FERC ¶ 61,295 at P 2.

²² *MATL*, 116 FERC ¶ 61,071 at P 2.

them.²³ A strict application of the 10 criteria has become less appropriate—especially outside the RTO/ISO context; and the Commission has indicated receptivity to reconsidering the role of the 10 criteria.²⁴

37. In the instant case, which is outside the RTO/ISO context, we take the opportunity to revisit the 10 criteria as a generic approach to evaluating merchant transmission owners' requests for negotiated rate authority. Below, we first refine and clarify our analytical methodology for granting negotiated rate authority to merchant transmission projects. We then evaluate Chinook's and Zephyr's specific applications pursuant to this refined methodology. Our intent is to re-focus the Commission's analysis on the mandate of section 205 of the FPA and the underlying areas of concern that the Commission seeks to address in its evaluation of negotiated rate applications for merchant transmission projects. Thus, our refined analysis for granting merchant transmission owners negotiated rate authority focuses on the following four areas of concern: (1) the justness and reasonableness of rates; (2) the potential for undue discrimination; (3) the potential for undue preference, including affiliate preference; and (4) regional reliability and operational efficiency requirements. The refined analysis is reflective of the policy concerns upon which the 10 criteria are based, while at the same time being less rigid, generally applicable to projects both within and outside of the RTO/ISO context, and more flexible in addressing the financing realities and other issues faced by merchant transmission developers.

1. Four-factor Analysis

a. Just and Reasonable Rates

38. To approve negotiated rates for a merchant transmission project, the Commission must find that the rates are just and reasonable.²⁵ In determining whether negotiated rates are just and reasonable, the Commission first looks to whether the merchant transmission owner has assumed the full market risk for the cost of constructing a particular transmission project and is not building within the footprint of its own (or an affiliate's) traditionally regulated transmission system. In such a case, there are no "captive" customers who would be required to pay the costs of the project. The Commission will also consider whether the merchant transmission owner or an affiliate already owns transmission facilities in the particular region of the project; what alternatives customers

²³ *Sea Breeze*, 112 FERC ¶ 61,295 at P 17, 22, 27, 32; *MATL*, 116 FERC ¶ 61,071 at P 27, 32, 45.

²⁴ *See, e.g., Sea Breeze*, 112 FERC ¶ 61,295 at P 17; *MATL*, 116 FERC ¶ 61,071 at P 32.

²⁵ 16 U.S.C. § 824d(a) (2006).

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.²⁶

39. Additionally, the Commission will continue to require merchant transmission owners retaining control of their projects to create firm tradable secondary transmission rights. It will also require merchant transmission owners to create and maintain an OASIS for customers to purchase and sell these rights.

b. Undue Discrimination

40. In order to prevent undue discrimination when granting merchant transmission owners negotiated rate authority, the Commission primarily looks to two things: (1) the terms and conditions of a merchant transmission 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).

41. The open season enables the merchant transmission developer to determine the extent of interest in the project, which in turn enables it to determine whether the project needs to be re-sized to fit the market. 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.²⁷ 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. Such 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 that 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.

²⁶ For example, negotiated rates may be appropriate when the service on a neighboring public utility under cost-of-service rates—essentially capped at the utility's cost of expansion—can provide a reasonable alternative. A further check on the negotiated rates could exist where the price customers are willing to pay for transmission service is disciplined by the difference in generation prices at the ends of the line (i.e., the market price of generation on either side of the line).

²⁷ See *MATL*, 116 FERC ¶ 61,071 at P 37 (“[T]he Commission’s concern in evaluating the open season process is to provide transparency in the bidding process and to enable unsuccessful bidders to determine if they were treated in a fair manner.”).

42. In the past, the Commission has required that merchant transmission owners allocate all initial capacity through a pre-construction open season. Our decision in this order to forego this requirement marks an evolution in the Commission's policy.²⁸ It acknowledges that the 100 percent open season allocation requirement has become unduly rigid and inflexible in light of the above-described objectives. As discussed more fully below, we will evaluate any proposal to allocate all or a portion of initial capacity outside of an open season on a case-by-case basis to ensure that merchant transmission developers do not act in an unduly discriminatory manner in allocating initial capacity.

43. For those merchant transmission owners who choose to presubscribe a portion of their capacity to an anchor customer, we will continue to rely on the post-open season reporting requirement and complaint process to determine whether the merchant transmission developer has unduly discriminated against any party in its presubscription of capacity. The post-open season reporting requirement should provide parties with enough information to determine whether they have been unduly discriminated against and, accordingly, whether to file a complaint with the Commission.

44. We acknowledge that as a practical matter, merchant transmission developers face difficulties in financing large transmission projects, such as the "chicken-and-egg" scenario that arises when generators, purchasers, and transmission owners all wait for the other to commit money to a project before committing themselves. In this respect, the financial commitments made by anchor customers prior to an open season provide crucial early support and certainty to merchant transmission developers, which enables them to gain the critical mass necessary to develop these projects.²⁹ This approach may be

²⁸ Previously, in the *Neptune* proceedings, a merchant transmission owner proposed to negotiate bilateral transactions with large customers for up to 30 percent of its capacity prior to conducting an open season. The Commission rejected this proposal, noting that the transparency afforded by the open season is essential to helping the Commission determine that parties were treated fairly in the initial allocation process, especially where affiliates participate in the open season, as was the case in *Neptune*. The Commission stated, however, that it was willing to reconsider the issue of open seasons for the initial allocation of transmission rights for projects in which equity investors and other affiliates do not participate. *Neptune II*, 103 FERC ¶ 61,213, at P 17-18.

²⁹ This sentiment was reinforced in comments received by the Commission in its recent technical conference on "Transmission Barriers to Entry" (Docket No. AD08-13-000), there seems to be substantial support from the industry for the "anchor customer" model. *See, e.g.*, AWEA, January 9, 2009 Comments; SunZia Southwest Transmission Project, November 13, 2008 Supplemental Comments.

particularly beneficial to address the unique challenges associated with location-constrained resources.³⁰

45. The Commission has recognized similar difficulties before, in the context of offshore pipelines on the Outer Continental Shelf (OCS). In *Green Canyon Pipe Line Company*, the Commission permitted similar pre-open season allocation deals, stating the following:

[The] contention that a new OCS venture may not accord a priority in firm transportation to those producers which make commitments to transport through proposed facilities is unreasonable. It is doubtful if Green Canyon would have proposed the subject facilities without clear indications of producer interest and commitment. The risks and costs of construction in areas such as the Green Canyon area are simply too great for a pipeline venture to proceed without such commitments. On the other hand, it is unreasonable to expect such producers to make such commitments and expensive investments in production facilities without a corresponding commitment of capacity by the pipeline.³¹

The above-quoted passage aptly describes the difficulties that continue to confront merchant transmission developers in the financing of large transmission projects. The Commission recognizes such financing concerns and is open to being flexible in its response, provided that it is satisfied that merchant transmission developers do not act in an unduly discriminatory manner in allocating capacity.³²

46. The Commission has been supportive of merchant transmission projects, recognizing that they play an important role in expanding competitive generation alternatives. In granting negotiated rate authority to such projects, the Commission must balance its responsibility to prevent undue discrimination and ensure that rates are just and reasonable with the real-life financing and cost-recovery concerns of the merchant transmission entities that undertake to build such projects. We recognize that merchant transmission developers are under no obligation to build their proposed projects, that they

³⁰ *California Independent System Operator Corp.*, 119 FERC ¶ 61,061 (2007) (describing unique challenges associated with location-constrained resources).

³¹ *Green Canyon Pipe Line Co.*, 47 FERC ¶ 61,310, at 62,114 (1989).

³² *Id.* (noting that the developer had contacted all of the major interest owners in the particular area of the OCS and offered to provide the proposed service prior to filing its application).

will do so only where and when a market exists for the line, and that they assume the full risk associated with the project. In light of the difficulties in financing merchant transmission projects, we find that the anchor customer model can play a useful role in the continued development of merchant transmission projects.

47. Subsequent to the pre-construction open season, the Commission expects that merchant transmission projects located in or adjacent to RTOs or ISOs will consider handing over operational control of their facilities to the relevant RTO or ISO. For those projects not located in an RTO/ISO area, merchant transmission developers must file and provide non-discriminatory service pursuant to the *pro forma* OATT requirements in Order No. 890. To the extent deviations from the *pro forma* OATT are necessary, merchant transmission developers must explain and support the deviations sufficiently. As in *MATL*, the Commission will evaluate OATT deviations on a case-by-case basis.³³

c. Undue Preference and Affiliate Concerns

48. In the context of merchant transmission, our concerns regarding the potential for affiliate abuse arise in situations where 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 line.

49. We will apply a higher level of scrutiny when affiliates of the merchant transmission developer are anchor customers due to the absence of arms' length negotiations as a basis for the commitment, concerns that the affiliate would receive unduly preferential treatment, further concerns that a utility affiliate contract could shift costs to captive ratepayers of the affiliate and subsidize the merchant project inappropriately, and the lack of transparency that would surround the arrangement. However, to the extent that the merchant transmission developer can sufficiently demonstrate in its negotiated rate application that there was no undue preference afforded an affiliated anchor customer, we will consider such arrangements on a case-by-case basis.

50. Similarly, with respect to the open season, affiliates of the merchant transmission owner should not be permitted to participate, absent showing that the affiliate is not afforded an undue preference. This policy is necessary in order to prevent merchant transmission developers from offering a rate to affiliates that is unduly lower than rates to non-affiliates. Another concern raised by affiliate participation in open seasons involves the potential for a merchant transmission developer to charge higher rates to a regulated affiliate with captive customers. Not only would such an arrangement hurt the affiliate's captive customers, it could also subsidize the merchant transmission developer, thereby blocking entry by other merchant transmission developers and limiting what competition

³³ *MATL*, 116 FERC ¶ 61,071 at P 55-60.

may exist to build the transmission project. We acknowledge, however, that we have permitted affiliates to participate in open seasons before, and we will not preclude their future participation provided that certain steps are taken to ensure that the affiliate is not given any undue preference.³⁴

51. With respect to purchases of transmission rights on a merchant transmission line after the open season, we require both affiliates and non-affiliates to conduct such transactions according to the tariff of the RTO or ISO operating the line, if operational control has been turned over to such an entity. If the merchant owner retains operational control, such affiliate and non-affiliate transactions must be conducted pursuant to the merchant transmission owner's tariff. All such transactions must be conducted transparently and posted on the relevant entity's OASIS.

d. Regional Reliability and Operational Efficiency

52. Historically, vertically integrated utilities would cooperate to some degree in grid planning to ensure that a new transmission facility did not unduly disrupt its neighbor or regional grid operations. Prior to the development of mandatory reliability rules, the Commission was concerned that merchant transmission developers not jeopardize the safety and reliability of the grid. Moreover, once the merchant transmission line became operational, the Commission wanted to ensure that it was operated in a coordinated and efficient manner. To address these concerns, the Commission encouraged all existing merchant transmission projects connected to an RTO or an ISO to turn operational control over to the RTO/ISO. To the extent the project is located in or adjacent to an RTO/ISO, we will expect the merchant transmission developer to consider turning over operational control to the RTO or ISO due to the reliability benefits and operational efficiencies that can be achieved from such coordinated operation.

53. Because merchant transmission is subject to mandatory reliability requirements,³⁵ separate reliability requirements no longer seem necessary. Merchant transmission developers will be required to comport with all applicable requirements of the North American Electric Reliability Corporation (NERC) and any regional reliability council. We will also encourage such entities to participate in regional planning processes required by Order No. 890 as their projects move forward.

³⁴ See, e.g., *Neptune II*, 103 FERC ¶ 61,213 at P 21-22.

³⁵ 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).

2. Analysis of Chinook's and Zephyr's Applications

54. While Chinook's and Zephyr's applications describe the respective projects in light of the 10 criteria the Commission has employed historically, we will evaluate Chinook's and Zephyr's applications in light of the four factors discussed above. In conditionally granting Chinook's and Zephyr's applications for negotiated rate authority, we re-affirm our commitment to fostering the development of merchant transmission projects through our adoption of a more flexible approach toward negotiated rate applications that simultaneously acknowledges the financing realities faced by merchant transmission developers and carries out the Commission's customer-protection mandate.

a. Just and Reasonable Rates

55. For the reasons discussed below, Chinook's and Zephyr's applications support a finding that negotiated rates on the respective projects are just and reasonable. Chinook and Zephyr both meet the definition of a merchant transmission owner, insofar as both entities assume all market risk associated with their respective projects and neither entity has captive customers. Therefore both the Chinook and Zephyr projects will succeed or fail based on whether a market exists for their services; they have no ability to pass on any costs to captive ratepayers.

56. Both Chinook and Zephyr are new entrants into the transmission markets in the western Rocky Mountain region and, therefore, are not increasing their presence in the area. Additionally, neither Chinook nor Zephyr have local affiliates that own transmission facilities in the region. Moreover, once the lines are operational, our open access requirements will ensure that neither Chinook nor Zephyr can effectively control barriers to entry in the relevant markets. They have agreed to provide non-discriminatory service pursuant to the OATT requirements in Order No. 890, including firm tradable secondary transmission rights. Furthermore, both Chinook and Zephyr commit to establishing a website and ultimately an OASIS to allow for the trading of these secondary transmission rights.

57. We also note that other merchant transmission projects are currently being proposed for development in the same general region as the Chinook and Zephyr projects.³⁶ The existence of other merchant transmission projects will enhance competition among transmission providers in the region. Additionally, no entity

³⁶ In a recent petition for declaratory order, Mountain States Transmission Intertie, LLC and NorthWestern Corporation filed an application for negotiated rate authority for a project located in Montana and Idaho. *See* Mountain States Transmission Intertie, LLC, January 15, 2009 Petition, Docket No. EL09-30-000.

operating on either end of the proposed merchant lines is required to purchase transmission service from either Chinook or Zephyr, and will only do so if it is cost effective.

58. Another disciplining force on the negotiated rates that Chinook and Zephyr will be able to charge is the cost of expansion on neighboring utilities. Pursuant to their OATTs, traditional public utilities have an obligation to expand their transmission capacity, upon request, at cost-based rates.³⁷ Chinook's and Zephyr's merchant transmission projects will no doubt interconnect with public utilities, from which customers could secure service at a cost-based rate. Therefore, the cost of expansion provides additional downward pressure on the negotiated rates Chinook and Zephyr will be able to charge their customers.³⁸

59. These factors, in addition to Chinook's and Zephyr's commitments to hold open seasons (conducted and reported on by an independent consultant), and commitments to provide service pursuant to a Commission-approved OATT lead us to the conclusion that the requested negotiated rate authority is just and reasonable for service on the two projects.

b. Undue Discrimination

60. As discussed above, 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. Here, both Chinook and Zephyr commit to holding an open season for a substantial amount of transmission capacity—50 percent of the initial capacity (1,500 MW)—on their respective lines. In each case, the remaining 50 percent will be allocated to an anchor customer outside the open season context. The respective anchor customer's capacity will not be subject to pro-rationing if bids for capacity in the open season exceed the 1,500 MW available. Furthermore, both Chinook and Zephyr commit to providing service pursuant to an OATT.

³⁷ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, at P 814, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 73 Fed. Reg. 39,092 (July 8, 2008), 123 FERC ¶ 61,299 (2008).

³⁸ We do not reach the issue on the facts of this case of whether Chinook and Zephyr as merchant projects would be required to expand their facilities upon request or the appropriate rate for doing so.

61. Chinook and Zephyr commit to giving the same deal (i.e., rates, terms and conditions) to any customer willing to make the same time commitment (25 years) as the anchor customer. Chinook and Zephyr also commit to exploring expansion of their projects if open season requests exceed the remaining capacity. Finally, the lack of protests (and the abundance of support) indicates that no entities believe they have been treated unfairly in either Chinook's or Zephyr's allocation processes.³⁹ Because of these circumstances, we conclude that Chinook's and Zephyr's proposals do not pose a risk of undue discrimination.

62. In addition to the commitments made concerning the open season (e.g., posting winning bidders and amount and length of service, reporting results with the Commission), Chinook and Zephyr also make the following commitments with respect to the continued operation of their project: (1) books and records for their respective projects will comply with the Uniform System of Accounts in Part 101 of the Commission's regulations⁴⁰ and will be subject to examination as required in Part 41 of the regulations;⁴¹ (2) Chinook and Zephyr will file financial statements and reports in accordance with Part 141 of the Commission's regulations;⁴² and (3) Chinook's and Zephyr's books and records will be audited by an independent auditor. These commitments will assist the Commission in carrying out its oversight role and in ensuring that both Chinook and Zephyr continue to live up to the commitments they assume herein.

63. Therefore, as discussed above, granting negotiated rate authority to Chinook and Zephyr, conditioned on abiding by the commitments made herein and filing a non-discriminatory OATT, should not lead to undue discrimination. Chinook and Zephyr are required to file an OATT that adheres to the *pro forma* OATT in Order No. 890 prior to service commencing on their lines. Any deviations from the *pro forma* OATT must be supported and will be evaluated by the Commission when they are submitted so that the Commission can be sure that Chinook and Zephyr will provide open and non-discriminatory service on their systems.

64. Chinook and Zephyr do not anticipate that either project will provide network or ancillary services. With regard to the latter, while we typically require that ancillary

³⁹ See *MATL*, 116 FERC ¶ 61,071 at P 37 (“[T]he Commission’s concern in evaluating the open season process is to provide transparency in the bidding process and to enable unsuccessful bidders to determine if they were treated in a fair manner.”)

⁴⁰ 18 C.F.R. Part 101 (2008).

⁴¹ *Id.* Part 41.

⁴² *Id.* Part 141.

services be provided by the transmission provider under its OATT, we recognize that this may not be practical for merchant transmission developers, such as Chinook and Zephyr, who do not have generation resources, and thus, the means to provide generation-based ancillary services. Thus, to the extent a merchant transmission developer believes it is not in a position to provide ancillary services, it should negotiate in the precedent agreements it enters into with its customers as to how ancillary services for the project will be provided.

c. Undue Preference and Affiliate Concerns

65. Chinook and Zephyr state in their applications that although they have affiliates that own natural gas and oil pipelines and electric generation, no electric generation affiliate is located or currently does business in any state in which the projects will be located and the projects will not interconnect with any existing facilities owned by either of the merchant transmission owner's affiliates. Furthermore, neither Chinook nor Zephyr anticipate that affiliates will subscribe to capacity on the respective projects. If affiliates do participate in the open season, Chinook and Zephyr state that they will employ safeguards previously approved by the Commission, such as using an independent consultant to evaluate open season bids and filing the consultant's post-open season report with the Commission.⁴³ Additionally, Chinook and Zephyr both commit that in the event that they deal with affiliates, separate books of account and records will be maintained in accordance with Commission regulations and will make such books and records available to the Commission for inspection. Chinook and Zephyr further commit to complying with the Standards of Conduct, any other affiliate rules, and filing quarterly reports. In light of these commitments and assurances, we find that Chinook and Zephyr adequately address any affiliate concerns present at this early stage of the projects. We also find that there should not be any cross-subsidization issues due to the lack of affiliate presence in the particular regions and the commitments made by the merchant transmission owners. As the projects develop, we will hold both Chinook and Zephyr to the commitments made herein.

d. Regional Reliability and Operational Efficiency

66. Because Chinook's and Zephyr's projects are located in areas without an RTO or ISO, Chinook and Zephyr will retain operational control of their respective projects once they are placed into service. As such, Chinook and Zephyr state that they will comply with applicable reliability requirements and procedures of NERC and WECC and that they are active participants in regional organizations such as the Northern Tier Transmission Group and the Northwest Transmission Assessment Committee. Additionally, Chinook and Zephyr assert that they will soon initiate the WECC Regional

⁴³ Citing *Sea Breeze*, 112 FERC ¶ 61,295 at P 29; *Neptune*, 103 FERC ¶ 61,213 at P 21.

Planning Process, which provides an opportunity for all stakeholders to cooperatively provide input to the proposed system configuration. Chinook and Zephyr will also initiate the WECC's Three Phase Rating Process, which will address the reliability impacts of their respective projects. Accordingly, the Commission finds that Chinook and Zephyr have met the regional reliability and operational efficiency requirement subject to Chinook's and Zephyr's continued participation in the WECC's Regional Planning Process and Three Phase Rating Process, along with their continued participation in the Northern Tier Transmission Group's and the Northwest Transmission Assessment Committee's planning processes.

3. Waiver Requests

67. In their applications, Chinook and Zephyr each request waiver of the filing requirements in Subparts B and C of Part 35 of the Commission's regulations, except for sections 35.13(a), 35.13(b), 35.15, and 35.16, and waiver of the Form No. 1, Annual Report of Major Electric Utilities, Licensee and Others, filing requirement.⁴⁴

68. Because Chinook and Zephyr are proposing to charge negotiated rates, the regulations requiring the filing of cost-based data are not applicable. Therefore, for good cause shown and consistent with our findings for other merchant transmission proposals, we will waive the filing requirements of Subparts B and C of Part 35 of the Commission's regulations, except for the requirements of sections 35.12(a), 35.13(b), 35.15, and 35.16.

69. The Commission will grant Chinook's and Zephyr's requests for waiver of the Form No. 1 filing requirement. In analyzing the merchant transmission owners' requests for waiver, the Commission needs to weigh (1) the need for the Commission and the public to have access to the information contained in Form No. 1, and (2) developing policies that will promote competition.⁴⁵ For public utilities with cost-based rates, the information provided in Form No. 1 is necessary to ensure that rates are reasonable. However, Chinook's and Zephyr's rates will be negotiated rather than cost-based, and like merchant generators with market-based rate authority, neither Chinook nor Zephyr

⁴⁴ We note that Chinook and Zephyr both request waiver of Subparts B and C of Part 35 of the Commission's regulations with the exception of the above-listed sections. We will not, however, grant waiver of section 35.12(a), as requested. In the past, we have granted waivers of Subparts B and C with the exception of sections 35.12(a), 35.13(b), 35.15, and 35.16. *E.g.*, *Sea Breeze*, 112 FERC ¶ 61,295 at P 35, 38. We will continue that practice here, and therefore deny waiver of section 35.12(a).

⁴⁵ *See MATL*, 116 FERC ¶ 61,071 at P 66.

will have captive customers. On balance, therefore, especially given that there is no immediate need for this information, the Commission will grant Chinook's and Zephyr's requests for waiver of the Form No. 1 filing requirement.

The Commission orders:

(A) Chinook and Zephyr are hereby granted authority to sell transmission rights at negotiated rates, subject to conditions as discussed in the body of this order.

(B) Chinook and Zephyr are hereby directed to file a report of the open season results with the Commission within 30 days of the close of the open season.

(C) Chinook and Zephyr are hereby directed to file their OATTs in compliance with this Commission order within 30 days after the close of the open season.

(D) The Commission grants Chinook's and Zephyr's requests for waiver of the provisions of Subparts B and C of Part 35 of the Commission's regulations, with the exception of sections 35.12(a), 35.13(b), 35.15, and 35.16, as discussed in the body of this order.

(E) The Commission grants Chinook's and Zephyr's requests for waiver of the Form No. 1 filing requirement, as discussed in the body of this order.

By the Commission. Commissioner Kelliher is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.