

128 FERC ¶ 61,074
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Chinook Power Transmission, LLC

Docket Nos. ER09-432-001

Zephyr Power Transmission, LLC

ER09-433-001
(not consolidated)

ORDER ON REHEARING

(Issued July 22, 2009)

1. On March 23, 2009, Chinook Power Transmission, LLC (Chinook) and Zephyr Power Transmission, LLC (Zephyr) filed a request for limited clarification or, in the alternative, rehearing of the Commission's February 19 Order¹ authorizing Chinook and Zephyr to charge negotiated rates for transmission rights on their respective projects, subject to conditions, and granting associated waivers. Chinook and Zephyr also seek permission under section 35.3(b) of the Commission's regulations² to file Open Access Transmission Tariffs (OATTs) no later than one year before scheduled commercial operations begin in late 2014. In this order, we grant Chinook's and Zephyr's request for rehearing and grant their requests for permission to file their OATTs no later than one year prior to the commencement of commercial operations.³

I. Background

2. In its initial filing, Chinook proposed 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. In its initial filing, Zephyr

¹ *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,124 (2009) (February 19 Order).

² 18 C.F.R. § 35.3(b) (2008).

³ No other requests for rehearing of the February 19 Order were filed.

proposed 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. Chinook and Zephyr will undertake construction as merchant transmission developers. Accordingly, both Chinook and Zephyr sought the authority to charge negotiated rates on their respective lines.

3. As part of the proposals, Chinook and Zephyr explained that they each entered into an agreement with a wind generation developer to become an “anchor customer” and to share a portion of the initial development costs. Chinook and Zephyr explained that the anchor customer model was crucial to financing the projects given commercial realities and the recent financial crisis in the United States. Accordingly, Chinook and Zephyr each proposed to subscribe half of their project’s capacity (1,500 MW) to the anchor customers, and make the other half available through an open season.

4. In the February 19 Order, the Commission conditionally granted Chinook’s and Zephyr’s applications for negotiated rate authority. Among other things, the Commission conditioned its approval of the proposals on Chinook and Zephyr filing a report of their respective open season results and filing the OATTs within 30 days of the close of the open season.

II. Chinook’s and Zephyr’s Rehearing Request

5. Chinook and Zephyr request clarification, or in the alternative, rehearing of the Commission’s requirement to file their OATTs within 30 days of the close of the open season. Chinook and Zephyr state that they intend to file the draft OATTs used in the open season within 30 days of the completion of the open season, and they seek clarification that the filings will be for informational purposes only. Furthermore, Chinook and Zephyr propose that they be required to file final OATTs pursuant to section 205 of the Federal Power Act no later than one year prior to the commencement of operation of the projects.

6. Chinook and Zephyr state that there is not enough time to resolve transactional issues and to finalize and file their OATTs within 30 days of the close of the open season. Chinook and Zephyr also state that they intend to utilize the Order No. 890 *pro forma* OATT with certain changes necessary for their high-voltage DC transmission lines. Furthermore, because their merchant projects will operate outside a functioning Regional Transmission Organization (RTO), Chinook and Zephyr indicate that input will be needed from customers to finalize their respective OATTs. Consequently, Chinook and Zephyr state that the draft OATTs used during the open season will likely be revised based on subsequent negotiations, changes in operational and reliability requirements,

and other intervening events. Moreover, Chinook and Zephyr assert that permitting, financing, and construction will take years to complete, and commercial operations are not anticipated to begin until late 2014. Chinook and Zephyr argue that the Commission should only review the finalized OATTs, so as to avoid wasting resources reviewing earlier versions of OATTs that will inevitably be amended.

7. Chinook and Zephyr state that they will file their final OATTs early enough so that transmission providers and customers will have notice of the relevant tariff provisions well in advance of commercial operations. Accordingly, Chinook and Zephyr seek permission under section 35.3(b) of the Commission's regulations to file their OATTs no later than one year prior to commercial operations. Chinook and Zephyr claim that the Commission has previously allowed rate schedules to be filed more than 120 days before the start of service when the construction of facilities was involved.⁴ Chinook and Zephyr contend that allowing the OATTs to be filed a year in advance of commercial operations gives the Commission ample time to determine whether the non-conforming provisions are consistent with or superior to the *pro forma* OATT.

III. Discussion

8. The Commission grants Chinook's and Zephyr's request for rehearing of the February 19 Order and determines that Chinook and Zephyr need not file the OATTs within 30 days of the close of the open season.⁵ Additionally, we grant permission under section 35.3(b) of the Commission's regulations to file the OATTs no later than one year prior to the effective dates of service.

9. The requirement for Chinook and Zephyr to file their respective OATTs within 30 days of the close of the open season was intended to provide both customers and the Commission ample time to review the terms and conditions under which Chinook and Zephyr will provide transmission service. However, Chinook and Zephyr indicate that the filing requirement does not provide enough time for the companies to resolve all of the transactional, operational, and reliability issues applicable to their projects. We find these concerns to be reasonable. Because commercial operations are not anticipated until late 2014, we will not require Chinook and Zephyr to file their OATTs within 30 days of the close of the open season. Accordingly, we grant Chinook's and Zephyr's request for rehearing of the requirement in Ordering Paragraph (C) of the February 19 Order to file an OATT within 30 days of the close of the open season.

⁴ Chinook and Zephyr, March 23, 2009 Rehearing Request at 6 (citing *Dartmouth Power Assoc.*, 53 FERC ¶ 61,117 (1990)).

⁵ Because we grant rehearing of this filing requirement, we find that Chinook's and Zephyr's request for clarification of that requirement is moot.

10. In addition, the Commission will not require Chinook and Zephyr to file OATTs for informational purposes. Chinook and Zephyr represent that their final OATTs will likely be different from earlier draft versions. In this instance, the Commission does not see a benefit to receiving non-finalized OATTs as informational filings, and in light of our decision to grant rehearing of the filing requirement, we find that Chinook's and Zephyr's requests for clarification are moot.

11. Additionally, the Commission grants permission under section 35.3(b) of the Commission's regulations for Chinook and Zephyr to file their OATTs no later than one year prior to the effective dates of service. Granting permission will provide the companies and customers time to resolve transactional, operational and reliability issues, and also provide sufficient time for the Commission and the customers to review the finalized OATTs. Chinook and Zephyr should notify the Commission within 30 days of the date services will commence under their OATTs.

The Commission orders:

(A) Chinook's and Zephyr's request for rehearing of the February 19 Order is hereby granted.

(B) Chinook and Zephyr are granted permission under section 35.3(b) of the Commission's regulations to file their OATTs no later than one year prior to the commencement of service.

(C) Chinook's and Zephyr's request for clarification of the February 19 Order is hereby rejected as moot.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.