135 FERC ¶ 61,104
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Hudson Transmission Partners, LLC — Docket No. ER11-3017-000

ORDER AUTHORIZING PROPOSAL AND GRANTING WAIVERS IN PART

(Issued April 29, 2011)

1. On March 3, 2011, Hudson Transmission Partners, LLC (Hudson Transmission) filed a request for authorization to charge negotiated rates for transmission rights on a proposed merchant transmission project (Project)[1] and also requests waiver of certain Commission regulations.[2] In this order, the Commission authorizes Hudson Transmission to charge negotiated rates for transmission rights on its Project and grants in part and denies in part Hudson Transmission's request for waiver, as discussed below.

I. Background

A. Applicant

2. Hudson Transmission is a joint venture of Hudson Power Ventures, LLC (Hudson Power Ventures), Anbaric Hudson, LLC (Anbaric), and Triton Partners, LLC (Triton). Hudson Transmission states that Hudson Power Ventures, Anbaric, and Triton, and their

[1] Commission precedent distinguishes merchant transmission projects from traditional public utilities in that the developers of merchant projects assume all of the market risk of a project and have no captive customers from which to recover the cost of the project. *See, e.g., Champlain Hudson Power Express, Inc.*, 132 FERC ¶ 61,006 (2010) (*Champlain Hudson*); *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134 (2009) (*Chinook*).

[2] Hudson Transmission filed its request pursuant to section 205 of the Federal Power Act (FPA)[2] and Part 35 of the Commission's Regulations, 18 C.F.R. Part 35 (2010). The filing was made in e-Filing. However, it did not contain tariff sections and was not filed in e-Tariff. Therefore, the filing need not be acted on within 60 days.

respective affiliates, own no interests in any generation or transmission assets other than the Neptune Regional Transmission System, LLC (Neptune), which is an existing 65-mile underwater high voltage direct current (HVDC) merchant transmission project connecting PJM Interconnection, L.L.C. (PJM) and Long Island, New York that is under the operational control of PJM.

3. Hudson Transmission states that Hudson Power Ventures, Anbaric, and Triton own one-third of the membership interests in and control Hudson Transmission. Following financial closing, Hudson Transmission states that Hudson Power Ventures will be the managing member of Hudson Transmission, with control over day-to-day operation and construction of the Project and will also own a larger share of Hudson Transmission.

4. Hudson Transmission states that development capital for the Project is being provided by investment entities that are controlled by or under common control of Starwood Energy Group Global, LLC (Starwood), a private equity fund or funds managed by EIF Management, LLC (EIF), and by Hudson Power Ventures, Anbaric, and Triton. Hudson Transmission states that Starwood and EIF will provide substantially all construction equity for the Project at financial closing and will provide substantially all future equity funds necessary to construct and complete the Project.

B. Description of Project

5. Hudson Transmission proposes to develop an approximately eight-mile HVDC transmission line that will originate at the Bergen Substation in Ridgefield, New Jersey to the Consolidated Edison West 49th Street Substation in New York City. The Project will include a back-to-back AC/DC/AC converter station in Ridgefield, New Jersey that provides controllability and scheduling capability to the flow of energy between PJM and the New York Independent System Operator (NYISO). Construction of the Project is expected to last approximately twenty-six months. The transmission line will be buried underground, as well as under the Hudson River, to a landfall point near Pier 92 in Manhattan before arriving at the Consolidated Edison Substation. Hudson Transmission is responsible for funding $172 million in network upgrades to the PJM transmission system and has accepted responsibility for over $16 million in system upgrades to the NYISO transmission system as part of the NYISO Attachment S cost allocation process.[3]

C. Application

6. Hudson Transmission requests negotiated rate authority for the project and approval of its plan for allocation of its transmission capacity, including (1) the initial

[3] Filing at 21.

allocation of transmission capacity to the New York Power Authority (NYPA); and (2) an allocation of 25 percent of the transmission capacity through bilateral agreements with anchor customers and/or open seasons. Hudson Transmission states that the NYPA will purchase an initial allocation of 75 percent of the 660 MW of transmission capacity on the Project (approximately 495 MW) for a term of 20 years.[4] NYPA selected Hudson Transmission as the successful bidder in a request for proposals (RFP) issued by the New York Power Authority to provide transmission capacity in November 2006. Hudson Transmission states that as a result of that RFP process, Hudson Transmission and NYPA have reached a long-term agreement, subject to NYPA Board approval.

7. Hudson Transmission also requests approval to presubscribe up to 15 percent of the Project's transmission capacity through bilateral agreements with anchor customers and to allocate the remaining capacity (between 10 and 25 percent) through an open-season process.[5]

8. Hudson Transmission states that it intends to turn over operational control of the Project to NYISO upon completion.[6] Hudson Transmission states that NYISO will operate its portion of the Project under its Open Access Transmission Tariff (OATT), which will include a separate schedule for taking transmission service on the Project's line.

9. Hudson Transmission also makes the following commitments with respect to the continued operation of its Project: (1) keep separate books and records for the Project; (2) employ an independent auditor to audit its books and records; and (3) make its books and records available for Commission inspection.[7]

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[4] Hudson Transmission states that the Project is sized to withdraw 673 MW (gross capacity) from PJM and to deliver 660 MW (net capacity) into the NYISO, allowing for 13 MW in losses over the converter station and transmission cable.

[5] In other words, Hudson Transmission seeks approval to presubscribe up to 60 percent of the 25 percent of capacity remaining, after the allocation to NYPA, on the line through bilateral agreements with anchor customers. If the full 15 percent was presubscribed to anchor customers, 10 percent would remain available for allocation in an open-season process.

[6] Filing at 25.

[7] *Id.* at 34.

10. Hudson Transmission asserts that it has obtained all major permits and agreements necessary to start construction upon financial closing.[8] Hudson Transmission contends that it meets the four factor analysis as outlined in *Chinook* for approval of negotiated rate authority,[9] as discussed more fully below. Hudson Transmission requests that the Commission act on its application by April 29, 2011, in order to meet Hudson Transmission's timeline for permitting, financing, scheduling, and construction of the Project.

II. Procedural History, Notice of Filings and Responsive Pleadings

11. Notice of Hudson Transmission's application was published in the *Federal Register*, 76 Fed. Reg. 13,399 (2011), with motions to intervene, notices of intervention, comments, and protests due on or before March 24, 2011.

12. Consolidated Edison Company of New York, Inc. and Orange & Rockland Utilities, Inc. submitted a timely joint motion to intervene. NYPA also filed a timely motion to intervene.

III. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Negotiated Rate Authority

14. In addressing requests for negotiated rate authority from merchant transmission providers, the Commission has demonstrated a commitment to fostering the development

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[8] Included among those permits are the New Jersey Department of Environmental Protection Waterfront Development permit, the New York Public Service Commission Article VII permit, and the Army Corps of Engineers permit. When taken together, the permits only allow Hudson Transmission to work in the Hudson River during a limited time window, between June 1 and November 15, in order to begin commercial operations in advance of the peak electricity demand season in 2013. Additionally, the Project has completed the interconnection process with both PJM and NYISO, and has executed an Engineering, Procurement, and Construction contract with Siemens Energy, Inc. and Prysmian Power Cables & Systems USA, LLC. Filing at 20.

[9] *Chinook*, 126 FERC ¶ 61,134 at P 37-53.

of such projects where reasonable and meaningful protections are in place to preserve open access principles and to ensure that the resulting rates for transmission service are just and reasonable.[10] The Commission's analysis for evaluating negotiated rate applications focuses on four areas of concern: (1) the justness and reasonableness of rates; (2) the potential for undue discrimination; (3) the potential for undue preference, including affiliate preference; and (4) regional reliability and operational efficiency requirements.[11] This approach simultaneously acknowledges the financing realities faced by merchant transmission developers and the consumer protection mandates of the FPA and the Commission's open access requirements. Moreover, this approach allows the Commission to use a consistent analytical framework to evaluate requests for negotiated rate authority from a wide range of merchant projects that can differ substantially from one project to the next.

1. <u>Four-factor Analysis</u>

a. <u>Just and Reasonable Rates</u>

15. To approve negotiated rates for a merchant transmission project, the Commission must find that the rates are just and reasonable.[12] 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 and is not building within the footprint of its own (or an affiliate's) traditionally regulated transmission system. If so, the Commission must determine 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

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[10] *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 (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); *Champlain Hudson*, 132 FERC ¶ 61,006 at P 16 (authorizing Champlain to charge negotiated rates for transmission rights and accepting Champlain's proposal to seek up to 75 percent presubscription from anchor customers).

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

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

competitors, and whether the merchant transmission owner would have any incentive to withhold capacity.

i. Hudson Transmission's Proposal

16. Hudson Transmission explains that it will assume full market risk of the Project and that it has no captive customers.[13] Hudson Transmission provides that investors already have invested tens of millions of dollars of at-risk capital in the Project with no guarantee of any return. Hudson Transmission states that neither it nor any of its affiliates have a traditionally regulated transmission system in the footprint of the Project or in any "first-tier" geographic locality. Hudson Transmission states that it will be unable to exercise market power or establish barriers to entry in the relevant markets because it will turn over operational control of the Project to NYISO, to be operated under its respective OATT. Hudson Transmission adds that it will recover its costs only from customers who voluntarily agree to purchase transmission capacity on the Project's line. All project costs, including fixed and operating costs, will be recovered through the revenues received from customers that voluntarily acquire transmission capacity on the Project.[14] Hudson Transmission asserts that while Hudson Transmission's affiliate Neptune also owns a merchant transmission line in the region, that line has been turned over to the operational control of PJM, and service on that line is reserved and taken under the PJM OATT.

17. Furthermore, Hudson Transmission states that there are alternatives to acquiring transmission capacity available to NYISO customers. For example, customers can generate or purchase energy in NYISO.[15] Hudson Transmission also states that a number of other transmission paths between PJM and NYISO and from ISO New England, Inc. and other parts of New York into Zone J of the NYISO exist or have been proposed.[16] Hudson Transmission also explains that the cost of expansion of neighboring utilities provides downward pressure on the negotiated rates that Hudson Transmission will charge. Hudson Transmission states that no customer will purchase transmission capacity from Hudson Transmission unless it is cost-effective to do so and the customer voluntarily agrees.

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[13] Filing at 25.

[14] *Id.* at 25.

[15] *Id.* at 26.

[16] *Id.* at 26-27.

ii. Commission Determination

18. The Commission concludes that Hudson Transmission's request for authority to charge negotiated rates for service on the Project is just and reasonable. Hudson Transmission meets the definition of a merchant transmission owner because it assumes all market risk associated with the Project and has no captive customers. Hudson Transmission has agreed to bear the risk that the Project will succeed or fail based on whether a market exists for its services. Hudson Transmission also has no ability to pass on any costs to captive ratepayers.

19. Hudson Transmission's affiliate Neptune owns a merchant transmission line in the region. However, the Neptune line has been turned over to the operational control of PJM, and service on that line is reserved and taken under the PJM OATT. Thus, Hudson Transmission has no ability to exercise market power or erect barriers to entry in the relevant markets. Similarly, once the Project is operational and control is turned over to NYISO, the Commission's open access requirements will ensure that Hudson Transmission cannot create barriers to entry or exercise market power in the relevant markets. Although Hudson Transmission will hand over operational control to NYISO and it will have a separate schedule under the NYISO OATT for use of the Hudson Transmission line, Hudson Transmission will remain at risk for the cost of the line because it will collect rates only from those customers that obtain contracts to transmit energy over the proposed line.

20. No entity operating on either end of the Project is required to purchase transmission service from Hudson Transmission, and customers will do so only if it is cost-effective. The Commission has recognized that negotiated rates for service over merchant transmission projects are effectively capped at the differential in power prices between markets at either end of the Project.[17] Another disciplining force on the negotiated rates that Hudson Transmission will be able to charge is the cost of expansion on neighboring utilities. Pursuant to their OATTs, public utilities have an obligation to expand their transmission capacity upon request, at cost-based rates.[18] Therefore, the cost of expansion provides additional downward pressure on the negotiated rates that

[17] *See Tres Amigas LLC*, 130 FERC ¶ 61,207 (2010).

[18] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, at P 814, FERC Stats & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on reh'g*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

Hudson Transmission will charge. Accordingly, these factors lead us to conclude that the requested negotiated rate authority is just and reasonable for service on the Project.

b. Undue Discrimination

21. As explained in *Chinook*, the Commission primarily looks at two factors to ensure that applicants cannot exercise undue discrimination when approving negotiated rate authority: (1) the terms and conditions of a merchant transmission developer's open season; and (2) its OATT commitments (or in the Regional Transmission Organization (RTO)/Independent System Operator (ISO) context, its commitment to turn operational control over to the RTO or ISO).[19] 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.[20]

22. In *Chinook*, the Commission also explained that it would "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."[21] The Commission has, on one occasion, accepted the allocation of capacity through an open, competitive, and government-entity-led RFP process in a merchant transmission context in lieu of a traditional open season.[22] In *Conjunction*, the Commission found that "the RFP process by a government entity has no potential for affiliate abuse and is designed to be non-discriminatory, fair and transparent."[23]

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[19] *Chinook*, 126 FERC ¶ 61,134 at P 40.

[20] *See Montana Alberta Tie, Ltd.*, 116 FERC ¶ 61,071, at P 37 (2006) ("[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.").

[21] *Chinook*, 126 FERC ¶ 61,134 at P 47.

[22] *Conjunction LLC*, 108 FERC ¶ 61,090, at P 14 (2004) (*Conjunction*) (finding that Conjunction's proposal to participate in a RFP issued by NYPA is a non-discriminatory, fair and transparent means of allocating transmission capacity and within the scope of its previously-granted merchant transmission negotiated rate authority).

[23] *Id.* at 13.

i. Hudson Transmission's Proposal

(a) Allocation of Capacity

23. Hudson Transmission requests approval to initially allocate 75 percent of the Project capacity to NYPA pursuant to Hudson Transmission's participation in an open and competitive RFP process run by NYPA in satisfaction of the Commission's open season requirement.[24]

24. Hudson Transmission requests that the Commission approve its proposal to pre-subscribe up to 15 percent of the Project capacity to anchor customers following its initial allocation of capacity through the NYPA RFP and prior to any traditional open season. First, Hudson Transmission states that taking on long-term anchor customers for up to 15 percent of the transmission capacity of the Project will help assure the financial viability of the Project.[25] Second, because the Project will provide important new long-term electric transmission infrastructure to New York City and because the Project is being relied upon by NYPA as a result of the RFP, Hudson Transmission wants to ensure that the Project will be completed on or ahead of schedule. Hudson Transmission states that it is operating in unique circumstances, given the current economic environment. Hudson Transmission suggests that the Commission's acceptance of 15 percent presubscription also might motivate additional sources of private equity to support additional merchant transmission development in the area. Hudson Transmission commits to negotiating presubscription agreements with anchor customers at arm's length and explains that it will offer the same rates, terms, and conditions that are offered to anchor customers to any open season participant. [26]

25. Hudson Transmission further commits to holding an open season for any transmission capacity, between 10 and 25 percent of the Project's total transmission capacity, not secured by the NYPA RFP or anchor customers, as discussed below, in order to prevent the exercise of undue discrimination. Hudson Transmission also commits to offering the same rates, terms, and conditions given to anchor customers to any open season participant willing to purchase transmission capacity for the same term. Hudson Transmission states that to ensure transparency, the specific rules of the open season, detailed bidding guidelines, estimated rates, and proposed form agreements will be posted on an Internet website and forwarded to interested parties. Hudson Transmission asserts that it will also provide public notice of the open season in

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[24] Filing at 28 (citing *Conjunction*, 108 FERC ¶ 61,090 at P 13-14).

[25] *Id.* at 31.

[26] *Id.* at 32.

appropriate trade publications, and, as with the open season conducted in *Chinook*, a successful bidder will have to meet reasonable credit requirements, identify the amount of transmission capacity and the length of term desired, and commit to a standard form agreement. Hudson Transmission states that it will retain an independent third party consultant to conduct and evaluate the open season bids, then post on its website the winning bidders' name, quantity, and the term of the transmission capacity purchased. Hudson Transmission states that the results of the open season will be provided to the Commission shortly after closing of the open season. Any unsold capacity from the open season and anchor customer processes will be made available for purchase in the day-ahead and real-time markets on the NYISO Open Access Same-Time Information System (OASIS).[27]

(b) Commitment to Turn Over Operational Control to an RTO or ISO

26. Hudson Transmission states that the Project will be interconnected on its two ends to PJM and the NYISO, respectively. Hudson Transmission commits to turn over operational control of the Project to the NYISO upon completion of the Project. Hudson Transmission provides that transmission service on the Project will be requested and taken under the NYISO OATT, which will include a separate schedule for taking transmission service on the line. In addition, Hudson Transmission states that tradable firm secondary transmission rights will be created and posted on the NYISO OASIS, and will be sold in accordance with Commission requirements as reflected in the NYISO OATT.[28]

ii. Commission Determination

27. The Commission looks specifically at the merchant transmission owner's open season and OATT commitments in determining whether negotiated rate authority could lead to undue discrimination on a particular merchant transmission project. As noted above, the Commission in *Chinook* explained that it would evaluate proposals to allocate all or a portion of initial capacity outside of an open season on a case-by-case basis. The Commission agrees with Hudson Transmission that its proposal, as conditioned below, is consistent with *Chinook* and should not lead to undue discrimination.

28. The Commission accepts Hudson Transmission's request to allocate 75 percent of transmission capacity on the Project to NYPA (i.e., approximately 495 MW), consistent with the terms of the NYPA RFP. The RFP NYPA conducted was open for up to 500

[27] *Id.* at 33-34.

[28] *Id.* at 34.

MW of energy and capacity in NYISO Zone J, was open to all parties, and considered both generation and transmission alternatives. Hudson Transmission submitted a proposal in response to the NYPA RFP and was selected by NYPA as the winning bidder in November, 2006. The RFP Hudson Transmission participated in was similar to the NYPA-led RFP addressed in *Conjunction*, which the Commission found was "a broad-based solicitation designed to increase power options in New York City" that supported the allocation of capacity to NYPA.[29] As in that case, we find that Hudson Transmission's use of an open, competitive, and government-entity led RFP process to initially allocate 75 percent of the transmission capacity assures that Hudson Transmission has not acted in an unduly discriminatory manner with regard to the allocation of capacity to NYPA and use of the NYPA RFP is consistent with our open-season criteria for merchant transmission projects.[30] The Commission similarly concludes here that Hudson Transmission's participation in a "RFP conducted by a government entity has no potential for affiliate abuse and is designed to be non-discriminatory, fair and transparent."[31]

29. We also approve Hudson Transmission's request to pre-subscribe up to 15 percent of the capacity of the transmission line to anchor customers.[32] In *Chinook*, the Commission re-affirmed its commitment to fostering the development of merchant transmission projects through the adoption of a more flexible approach to negotiated rate applications that allows for the allocation of certain capacity to anchor customers, acknowledging the financing realities faced by developers while carrying out the Commission's customer-protection mandate.[33] The Commission has approved similar requests to allocate capacity to anchor customers in the past in light of the difficulties in financing merchant transmission projects.[34] We will therefore approve Hudson

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[29] *Conjunction LLC*, 108 FERC ¶ 61,090 at P 13.

[30] *Id.*

[31] *Id.*

[32] Hudson Transmission's request to subscribe "up to 15 percent of the remaining capacity" is equivalent to 60 percent of the available capacity on the line following the initial allocation to NYPA.

[33] *Chinook*, 126 FERC ¶ 61,134 at P 60; *see also Champlain Hudson*, 132 FERC ¶ 61,006 at P 16.

[34] *See, e.g., Chinook*, 126 FERC ¶ 61,134 at P 60 (approving Chinook's presubscription of up to 50 percent of the project capacity to anchor customers); *see also Champlain Hudson,* 132 FERC ¶ 61,006 at P 47 (approving Champlain Hudson's proposal to seek up to 75 percent presubscription from anchor customers).

Transmission's request to allocate up to 15 percent of the capacity of the transmission line to anchor customers. Hudson Transmission commits to making an informational filing describing the terms of any anchor customer transactions.[35] Acceptance of Hudson Transmission's application is conditioned on Hudson Transmission making an informational filing with the Commission for any anchor customer transaction describing the terms of the agreement and the relevant facts and circumstances leading to the agreements no later than thirty days after end of the open season.[36]

30. Finally, we approve Hudson Transmission's request to allocate remaining capacity, ranging between 10 and 25 percent, using an open season subject to the submission of informational reports.[37] As stated in *Chinook*, 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.[38] The reports must include, at the very least, the terms of the open season (including notice of the open season and the method for evaluating bids), the identity of the parties that purchased capacity, and the amount, term, and price of that capacity.[39] 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.[40] The open season informational report should be filed within thirty days of the open season.

31. In addition, Hudson Transmission commits and we accept Hudson's commitment to turn operational control over to the NYISO upon completion of the Project. Based on the commitments and the conditions articulated herein, the Commission finds that Hudson Transmission's application provides sufficient assurances that approving negotiated rate authority for the Project does not pose a risk of undue discrimination.

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[35] Filing at 32.

[36] *Champlain Hudson*, 132 FERC ¶ 61,006 at P 44.

[37] Filing at 28.

[38] *Chinook*, 126 FERC ¶ 61,134 at P 41.

[39] *Id.*; *Champlain Hudson*, 132 FERC ¶ 61,006 at P 45.

[40] *Chinook*, 126 FERC ¶ 61,134 at P 41.

c. Undue Preference and Affiliate Concerns

32. In the context of merchant transmission, our concerns regarding the potential for affiliate abuse arise when the merchant transmission owner is affiliated with either the anchor customer, participants in the open season, and/or customers that subsequently take service on the merchant transmission line.

i. Hudson Transmission's Proposal

33. Hudson Transmission states that it satisfies any undue preference and affiliate concerns because it commits that no anchor customers will be affiliated with it. Hudson Transmission also states that it will employ safeguards eliminating any potential for affiliate abuse in the event that affiliates do participate in the open season with respect to the remaining 10 to 25 percent of the Project's transmission capacity. For example, Hudson Transmission states that it will file a post-open-season report with the Commission, maintain separate books of account and records in accordance with the Commission's regulations, turn over operational control of its facilities to NYISO, file electric quarterly reports, use an independent consultant to evaluate open season bids, and comply with any applicable affiliate rules, among other commitments.[41]

ii. Commission Determination

34. In light of the commitments made in the application, we find that Hudson Transmission adequately addresses any affiliate concerns present at this early stage of the Project. Furthermore, we accept Hudson Transmission's commitment to comply with Standards of Conduct and file electric quarterly reports of its transactions as required of transmission providers.[42]

d. Regional Reliability and Operational Efficiency

35. Merchant transmission projects, like cost-based transmission projects, are subject to mandatory reliability requirements.[43] Merchant transmission developers are required

[41] Filing at 35.

[42] 18 C.F.R. § 35.10(b); *see also* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 817; Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 394.

[43] *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).

to comport with all applicable requirements of the North American Electric Reliability Corporation and any regional reliability council in which they are located.

i. Hudson Transmission's Proposal

36. Hudson Transmission states that it meets the regional reliability and operational efficiency requirements by turning over operational control of its facilities to NYISO and committing to comply with all applicable reliability rules. Hudson Transmission states that transmission service on the Project will be taken under a new schedule in the NYISO OATT that will be developed in cooperation with NYISO and filed with the Commission prior to commercial operation of the Project in 2013.

ii. Commission Determination

37. Hudson Transmission commits to turning over operational control of its Project to NYISO and complying with applicable reliability requirements and procedures of North American Electric Reliability Corporation. Additionally, Hudson Transmission indicates that it has already entered into the reliability planning processes of NYISO and continues to work with NYISO to facilitate the filing of the appropriate Schedule for the NYISO OATT that will need to be filed with the Commission in advance of the transmission line going into service. Accordingly, the Commission finds that Hudson Transmission has met the regional reliability and operational efficiency requirement subject to Hudson Transmission's continued participation in the regional planning processes.

2. Waiver Requests and Other Items

a. Hudson Transmission's Proposal

38. Hudson Transmission requests that the Commission grant it waivers of the same filing requirements that the Commission previously granted merchant transmission providers.[44] Specifically, Hudson Transmission requests waiver of the full reporting requirements in Subparts B and C of Part 35 of the Commission's regulations, except for sections 35.12(a) (filing of initial rate schedules), 35.13(b) (general information to be filed with rate schedules), 35.15 (notices of cancellation or termination), and 35.16 (notices of succession); and, waiver of the requirement to file FERC Form No. 1, Annual Report of Major Electric Utilities, Licensee and Others.

39. Additionally, Hudson Transmission requests waiver of Parts 41 (accounts, records, and disposition of audit findings), 101 (uniform system of accounts), and 141 (forms and

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[44] Filing at 38 (citing *Chinook*, 126 FERC ¶ 61,134 at P 68-69; *Champlain Hudson*, 132 FERC ¶ 61,006 at P 59).

reports, with the exception of sections 141.14 and 141.15). Hudson Transmission states that the Commission recently addressed this issue and established a basis for when it would be appropriate to grant a waiver of the requirements in Parts 41, 101, and 141 for a transmission owning entity.[45]

40. Hudson Transmission asserts that because it will not sell at cost-based rates and does not have captive customers, waiver of the requirements in Parts 41, 101, and 141 (except sections 141.14 and 141.15) for a transmission owning entity is appropriate.

41. In addition to the specific waiver requests, Hudson Transmission requests waivers of any other part of the Commission's regulations as necessary to grant the authorizations requested in its application.

b. Commission Determination

42. Because Hudson Transmission is proposing to charge negotiated rates, the regulations requiring the filing of cost-based data are not applicable. We note that Hudson Transmission omits section 35.13(a) from its waiver request. Section 35.13(a) governs, in part, requirements for abbreviated cost of service filings. As a merchant transmission developer charging negotiated rates, these cost-based data are not applicable to Hudson Transmission. Because Hudson Transmission has requested "waiver of any other part of the Commission's regulations as necessary," the Commission will grant waiver of the section 35.13(a) filing requirements. 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) (filing of initial rate schedules), 35.13(b) (general information to be filed with rate schedules), 35.15 (notices of cancellation or termination), and 35.16 (notices of succession).

43. The Commission will also grant Hudson Transmission's request for waiver of Parts 41 (accounts, records, and disposition of audit findings), 101 (uniform system of accounts), and 141 (forms and reports) with the exception of the following sections: 41.1 through 41.8, 141.14, and 141.15. This includes Hudson Transmission's request for waiver of the FERC Form No. 1 filing requirement. The Commission has traditionally granted waivers and blanket authorizations only to those entities that are not subject to traditional cost-based regulation. Hudson Transmission will not sell transmission service at cost-based rates. However, we deny the request for waiver of sections 41.1 through 41.8 as these sections pertain to the Commission's audit process which remains applicable in this instance. Notwithstanding the waiver of the Commission's accounting

[45] Filing at 38 (citing *Sagebrush, a California Partnership*, 132 FERC ¶ 61,234, at P 35 (2010)).

and reporting requirements here, Hudson Transmission must keep its accounting books and records in accordance with generally accepted accounting principles, maintain separate books and records for the Project, and make its books and records available for Commission inspection.

The Commission orders:

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

(B) Hudson Transmission is hereby directed to file a report describing any anchor customer transaction with the Commission no later than 30 days after the end of the open season.

(C) Hudson Transmission is hereby directed to file a report describing the results of any open season with the Commission within 30 days of the end of the open season.

(D) The Commission grants Hudson Transmission'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 Hudson Transmission's request for waiver of the FERC Form No. 1 filing requirement, and Parts 41, 101, and 141 of the Commission's accounting and periodic reporting regulations with the exception of sections: 41.1 through 41.8, 141.14, and 141.15, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.