148 FERC ¶ 61,236
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ITC Lake Erie Connector LLC Docket No. ER14-2640-000

ORDER CONDITIONALLY AUTHORIZING NEGOTIATED RATE AUTHORITY AND GRANTING WAIVERS

(Issued September 26, 2014)

1. On August 13, 2014, ITC Lake Erie Connector LLC (ITCLEC) filed, pursuant to section 205 of the Federal Power Act (FPA)[1] and Part 35 of the Commission's regulations,[2] a request for an order confirming that ITCLEC retains authorization, previously granted to the Lake Erie CleanPower Connector (LECC), to sell transmission rights at negotiated rates on a proposed high-voltage direct current merchant transmission project (Project)[3] following a change in the Project's upstream ownership. ITCLEC also requests waiver of certain filing requirements previously granted in the Negotiated Rate Order. As discussed below, the Commission conditionally grants ITCLEC's request for negotiated rate authority for the Project under its new upstream ownership, subject to the Commission's approval of a subsequent section 205 filing, and grants ITCLEC's requests for waiver, as discussed below.

[1] 16 U.S.C. § 824d (2012).

[2] 18 C.F.R. pt. 35 (2014).

[3] *Lake Erie CleanPower Connector*, 144 FERC ¶ 61,203 (2013) (Negotiated Rate Order).

I. Background

A. ITCLEC and Affiliates

2. ITCLEC states that, when the Commission granted negotiated rate authority for the Project to LECC in the Negotiated Rate Order, LECC was a wholly-owned subsidiary of Lake Erie Power Delaware, Inc., which is in turn a wholly-owned subsidiary of Lake Erie Power Corporation (LEPC). LEPC is a privately-owned corporation organized and existing pursuant to the laws of Canada, with its principal place of business in Toronto, Ontario, Canada. ITCLEC states that LECC did not own or operate any electric generation, transmission, or distribution facilities.[4]

3. ITCLEC states that ITC Holdings Corporation, through its subsidiaries, invests exclusively in the electric power transmission grid to improve electric reliability, facilitate access to renewable and other generation, improve access to power markets, and reduce the overall costs of delivered electric power.[5] ITC Holdings Corporation subsidiaries are independent, stand-alone transmission companies engaged exclusively in the development, ownership, and operation of facilities for the transmission of electric energy in interstate commerce. ITC Lake Erie Holdings LLC is a wholly-owned subsidiary of ITC Holdings Corporation formed for the purpose of holding the assets of the Project.[6] ITCLEC states that, upon the transfer of the membership interests in LECC to ITC Lake Erie Holdings LLC, LECC was renamed ITCLEC.

B. The Project

4. On July 15, 2013, in Docket No. ER13-1979-000, LECC filed a request for authorization to sell transmission rights at negotiated rates over the Project and for waiver of certain Commission regulations and reporting requirements.[7] LECC stated that the

---

[4] ITCLEC Transmittal at 3.

[5] *Id*.

[6] *Id*. at 4.

[7] 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., Hudson Transmission Partners, LLC,* 135 FERC ¶ 61,104 (2011) (*Hudson Transmission*); *Champlain Hudson Power Express, Inc.*, 132 FERC ¶ 61,006 (2010) (*Champlain Hudson*); *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134 (2009) (*Chinook*).

Project is a 60-mile high-voltage direct current transmission line of up to 2,000 MW, which will originate in Nanticoke, Ontario, Canada and terminate in Erie, Pennsylvania.[8] LECC stated that the Project will directly connect the markets operated by PJM Interconnection, L.L.C. (PJM) and the Independent Electricity System Operator of Ontario, Canada (IESO). LECC stated that it had completed an engineering pre-feasibility study and market analysis to assess the commercial opportunities available to the Project's potential customers, optioned land in Canada and Pennsylvania for converter stations, filed interconnection applications with PJM, and retained engineering and environmental consultants to assist in procuring the necessary permits.[9] Upon completion of the transmission line, LECC stated that it will turn over operational control of the Project to PJM.[10]

5. On September 16, 2013, the Commission conditionally authorized LECC to sell transmission rights on the Project at negotiated rates and granted LECC's request for waiver in part of certain Commission regulations and reporting requirements.[11] The Commission found that LECC met the four factor analysis outlined in *Chinook* for approval of negotiated rate authority.[12] The Commission also approved LECC's request to allocate up to 100 percent of the Project's capacity through an open solicitation process conducted in accordance with the Commission's requirement in its January 17, 2013 Final Policy Statement on *Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects* (Policy Statement).[13] The Commission's authorization was conditioned upon LECC's submission of a subsequent section 205 filing providing the details necessary to judge the open solicitation and capacity allocation process, and to LECC filing a rate schedule for service under the PJM OATT prior to commencement of service.[14]

---

[8] LECC Negotiated Rate Application, Docket No. ER13-1979-000, at 4 (filed July 15, 2013).

[9] *Id.* at 5.

[10] *Id.* at 1-2.

[11] Negotiated Rate Order, 144 FERC ¶ 61,203 at PP 1, 30-31.

[12] *Id.* PP 12-13, 21-22, 25, 28.

[13] 142 FERC ¶ 61,038 (2013).

[14] Negotiated Rate Order, 144 FERC ¶ 61,203 at P 22.

6. ITCLEC states that, pursuant to a membership interest purchase agreement dated June 4, 2014, ITC Lake Erie Holdings LLC purchased 100 percent of the membership interests in LECC, along with certain assets associated with the Project, including land options, Project-related studies, consulting contracts, and trade names.[15] ITCLEC states that upon the transfer of membership interests in LECC to ITC Lake Erie Holdings LLC, LECC was renamed ITCLEC.[16] ITCLEC states that the purchase agreement recognizes that the Commission must confirm ITCLEC's retention of negotiated rate authority for the Project. ITCLEC further states that the planned development of the Project remains the same as it was when the Commission issued the Negotiated Rate Order.

C. Requested Relief

7. ITCLEC states that the change in ownership of the Project has not resulted in a material change to any of the factors upon which the Commission relied in granting LECC's former negotiated rate authority.[17] ITCLEC requests that the Commission issue an order confirming that: (1) ITCLEC retains authorization to sell transmission rights on the Project at negotiated rates; and (2) the previously-granted waivers of the Commission's regulations and reporting requirements remain effective.[18]

8. ITCLEC notes that it intends to commence the open solicitation process for the Project at the close of the third quarter of 2014, and requests Commission action no later than September 26, 2014, in order to facilitate this process.[19]

---

[15] ITCLEC Transmittal at 6-7. ITCLEC states that LECC had no operating transmission assets and had no rate schedules on file with the Commission at the time the agreement was signed, and therefore was not a public utility under section 201(d) of the FPA. ITCLEC also states that ITC Lake Erie Holdings LLC also has no transmission assets or rate schedules, and is not a public utility. *Id.* at 7 n.11.

[16] *Id.* at 7.

[17] *Id.* at 8.

[18] *Id.* at 2, 8.

[19] *Id.* at 15.

II. Notice, Intervention, and Responsive Pleadings

9. Notice of ITCLEC's filing was published in the *Federal Register*, 79 Fed. Reg. 49,506 (2014), with interventions and protests due on or before September 3, 2014. None was received.

III. Discussion

A. Negotiated Rate Authority

10. In the Negotiated Rate Order, the Commission granted LECC's request to charge negotiated rates for the Project based on the circumstances presented at that time, including the Project's ownership structure and affiliations. In light of ITC Lake Erie Holding LLC's acquisition of the membership interests in LECC, the specific circumstances that the Commission evaluated in granting LECC's original request for negotiated rate authority have changed. Thus, we will conduct a *de novo* analysis to determine if the Project, under its new upstream ownership, meets the requirements for negotiated rate authority.[20]

11. In addressing requests for negotiated rate authority from merchant transmission providers, the Commission is committed to fostering the development 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.[21] 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.[22]

---

[20] *See MATL LLP and Montana Alberta Tie, Ltd.*, 139 FERC ¶ 61,208 (2012); *Zephyr Power Transmission, LLC, et al.*, 139 FERC ¶ 61,020 (2012).

[21] *See, e.g.*, *TransEnergie U.S., Ltd.*, 91 FERC ¶ 61,230, at 61,838-39 (2000) (accepting a request to charge negotiated rates on a merchant transmission project, subject to conditions addressing, among other things, the merchant's open season proposal); *Mountain States Transmission Intertie, LLC*, 127 FERC ¶ 61,270, at PP 57, 59 (2009) (denying a request to charge negotiated rates on a merchant transmission project because, among other things, sufficient protections did not exist to ensure that rates for service would be just and reasonable); *Hudson Transmission,* 135 FERC ¶ 61,104 (authorizing Hudson Transmission to charge negotiated rates for transmission service).

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

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 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. Policy Statement

12. On January 17, 2013, the Commission issued the Policy Statement to clarify and refine its policies governing the allocation of capacity for new merchant transmission projects and new nonincumbent, cost-based, participant-funded transmission projects.[23] The Policy Statement allows the developer of a new merchant transmission project to select a subset of customers, based on not unduly discriminatory or preferential criteria, and negotiate directly with those customers to reach agreement for procuring up to 100 percent of transmission capacity when the developer: (1) broadly solicits interest in the project from potential customers; and (2) demonstrates to the Commission that the developer has satisfied the solicitation, selection and negotiation process set forth in the Policy Statement.[24] To the extent the Commission determines that a merchant transmission developer complies with such policies, the Commission will find that the developer has satisfied the second (undue discrimination) and third (undue preference) factors of the four-factor analysis.[25]

13. Under the Policy Statement, once a developer has identified a subset of customers through the open solicitation process, the Commission will allow the developer to engage in bilateral negotiations with each potential customer. In these negotiations, the Commission will allow for distinctions among prospective customers based on transparent and not unduly discriminatory or preferential criteria, with the potential result that a single customer, including an affiliate, may be awarded up to 100 percent of the transmission capacity.[26]

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

[24] *Id.* P 16.

[25] *Id.* P 15.

[26] *Id.* P 28.

2. Four-Factor Analysis

a. Factor One: Just and Reasonable Rates

14. To approve negotiated rates for a transmission project, the Commission must find that the rates are just and reasonable.[27] To do so, the Commission must determine that the merchant transmission owner has assumed the full market risk for the cost of constructing its proposed transmission project. Additionally, the Commission must determine whether the project is being built within the footprint of the merchant transmission owner's (or an affiliate's) traditionally regulated transmission system; if so, the Commission must determine that there are no captive customers who would be required to pay the costs of the project. The Commission also considers whether the merchant transmission owner or an affiliate already owns transmission facilities in the particular region where the project is to be located, what alternatives customers have, whether the merchant transmission owner is capable of erecting any barriers to entry among competitors, and whether the merchant transmission owner would have any incentive to withhold capacity.

i. ITCLEC's Proposal

15. ITCLEC asserts that ITC Lake Erie Holding LLC's acquisition of membership interests in LECC, along with certain Project-related assets, has not resulted in a material change to any of the factors upon which the Commission relied in granting LECC's former negotiated rate authority.[28] ITCLEC reaffirms that it will assume all market risks for the Project and that there will be no captive customers.[29] ITCLEC also states that when the transmission line is completed, it will turn over operational control of the line to PJM, which will operate the line under PJM's Open Access Transmission Tariff (OATT), thus preventing ITCLEC from acquiring market power or controlling barriers to entry in the PJM market. ITCLEC states that incumbent transmission owners have an obligation under the PJM OATT to expand their transmission capacity, upon request, at cost-based rates, and therefore no entity will purchase transmission service from ITCLEC unless it is cost-effective to do so when compared to the incumbent transmission owners' cost of expanding capacity.[30] ITCLEC also states that the Commission has recognized that

---

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

[28] ITCLEC Transmittal at 8.

[29] *Id.* at 9.

[30] *Id.* at 9-10.

negotiated rates for service over merchant transmission lines are effectively capped at the differential in power prices between markets, in this case the markets operated by IESO and PJM.[31] Finally, ITCLEC states that the anchor customers likely to subscribe to the Project are sophisticated utilities that would only secure transmission service at competitive rates.

16. ITCLEC states that neither it nor ITC Holdings Corporation own or operate any existing facilities in IESO or PJM, and that ITC Holdings Corporation will not pass any costs associated with the Project on to the customers of its existing subsidiaries.[32] However, ITCLEC notes that subsidiaries of ITC Holdings Corporation may own transmission assets in PJM in the future.[33] In this regard, ITCLEC states that ITC Holdings Corporation is the parent company of ITC Grid Development, LLC, whose subsidiaries ITC Interconnection LLC (ITCI) and ITC Mid-Atlantic Development LLC were formed to pursue new transmission investment opportunities in the PJM region.[34] ITCLEC states that ITCI is in negotiations to construct and own a new approximately one mile, 345 kV transmission line and related breakers, switches and equipment to interconnect an existing generating plant located in Michigan to a new substation owned by American Electric Power Company, Inc. or its affiliates or subsidiaries, which would complete the interconnection of the generating plant to PJM.[35]

ii. Commission Determination

17. The Commission concludes that ITCLEC's request for authority to charge negotiated rates for service on the Project has met the first of the *Chinook* factors (i.e., the justness and reasonableness of the rates). ITCLEC assumes all market risk associated with the Project and has no captive customers. ITCLEC will bear all market risks that the Project will succeed or fail based on whether a market exists for its services. Additionally, ITCLEC has no ability to pass any costs to captive ratepayers.

---

[31] *Id.* at 10 (citing *Tres Amigas LLC*, 130 FERC ¶ 61,207, at P 64 (2010) (*Tres Amigas*)).

[32] *Id.* at 9.

[33] *Id*. at 5.

[34] *Id.* at 4-5.

[35] *Id.* at 9 n.18.

18. No entity on either end of the Project is required to purchase transmission service from ITCLEC, and customers will do so only if it is cost-effective. ITCLEC will be unable to charge more for transmission than the expected differential in electric prices between IESO and a competitive price in PJM. Additionally, because neither ITCLEC nor its affiliates own any transmission facilities within the footprint of the Project, ITCLEC has no ability to erect barriers to entry in the relevant markets. Accordingly, these factors lead us to conclude that the requested negotiated rate authority meets the first of the *Chinook* factors, meaning that it is just and reasonable for service on the Project.

19. We take note of ITCLEC's active negotiations for affiliate projects in PJM and other RTO/ISO regions. ITCLEC must inform the Commission of any future affiliate ownership of any electric generation, transmission, or distribution assets in PJM, due to the impact that such ownership may have on our analysis, when it makes the required section 205 filing as discussed below.

b. Factor Two: Undue Discrimination

20. As explained in *Chinook*, the Commission has in the past primarily looked at two factors to ensure that applicants cannot exercise undue discrimination when approving negotiated rate authority: (1) the terms and conditions of a merchant developer's open season; and (2) its OATT commitments (or in the regional transmission operators (RTO)/ independent system operators (ISO) context, its commitment to turn operational control over to the RTO or ISO).[36] The Policy Statement, however, provides an alternative to conducting an open season. Under this alternative, a developer may demonstrate no undue discrimination or preference by conducting an open solicitation that complies with the requirements of the Policy Statement.[37] Specifically, the developer must: (1) broadly solicit interest in the project from potential customers; and (2) after the solicitation process, demonstrate to the Commission that it has satisfied the solicitation, selection, and negotiation process criteria set forth in the Policy Statement.[38]

i. Broad Notice Under the Policy Statement

21. Under the Policy Statement, applicants must issue broad notice of the project in a manner that ensures that all potential and interested customers are informed of the

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

[37] Policy Statement, 142 FERC ¶ 61,038 at PP 15, 23.

[38] *Id.* P 16.

proposed project, such as by placing notice in trade magazines or regional energy publications.[39] Such notice should include developer points of contact, pertinent project dates, and sufficient technical specifications and contract information to inform interested customers of the nature of the project, including: (1) project size/capacity; (2) end points of the line; (3) projected construction and/or in-service dates; (4) type of line; (5) precedent agreement (if developed); and (6) other capacity allocation arrangements (including how the developer will address potential oversubscription of capacity).[40] The developer should also specify in the notice the criteria it plans to use to select transmission customers. In addition, the developer may also adopt a specific set of objective criteria it will use to rank prospective customers, provided it can justify why such criteria are appropriate. Finally, the Policy Statement states that the Commission expects the developer to update its notice if there are any material changes to the nature of the project or the status of the capacity allocation process, in particular to ensure that interested entities are informed of any remaining available capacity.[41]

ii. <u>Post-Selection Filing under the Policy Statement</u>

22. The Policy Statement states that the Commission will continue to require merchant developers to disclose the results of their capacity allocation process, though this disclosure will be part of the Commission's approval of the capacity allocation process and thus will be noticed and acted upon under section 205 of the FPA. The Policy Statement explains that the Commission expects developers to demonstrate that the processes that led to the identification of transmission customers and the execution of the relevant contractual arrangements are consistent with the Policy Statement and the Commission's open access principles. In this filing, the developer should describe the criteria used to select customers, any price terms, and any risk-sharing terms and conditions that served as the basis for identifying transmission customers selected versus those that were not, as well as provide certain information listed in the Policy Statement in order to provide transparency to the Commission and interested parties.[42] The Policy Statement emphasizes that the information in the post-selection demonstration is an essential part of a merchant developer's request for approval of a capacity allocation process, and that the developer will have the burden to demonstrate that its process was in

---

[39] *Id.* P 23.

[40] *Id.* P 20.

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

[42] *Id.* P 30.

fact not unduly discriminatory or preferential, and resulted in rates, terms, and conditions that are just and reasonable.[43]

23. The Policy Statement allows developers discretion in the timing of requests for approval of capacity allocation processes. The Policy Statement provides two examples. First, a developer can seek approval of its capacity allocation approach after having completed the process of selecting customers in accordance with Commission policies. Alternatively, a developer can first seek approval of its capacity allocation approach, and then demonstrate in a compliance filing to the Commission order approving that approach that the developer's selection of customers was consistent with the approved selection process.[44]

iii. ITCLEC's Proposal

24. ITCLEC reaffirms LECC's prior commitment to turn over operational control of the Project to PJM and conduct an open solicitation process consistent with the Policy Statement.[45] To ensure that its open solicitation process is not unduly discriminatory or preferential, ITCLEC states that it will retain a third-party independent adviser experienced in overseeing open seasons for merchant transmission capacity to facilitate broad notice of the Project and the selection and ranking of prospective customers.[46] ITCLEC commits to make a subsequent filing pursuant to section 205 of the FPA seeking Commission approval of its open solicitation process, and states that this filing will explain its solicitation process with sufficient detail to demonstrate its capacity allocation was consistent with the Policy Statement and the Commission's open access policies.[47] ITCLEC also commits to file, through eTariff, a rate schedule for service under the PJM OATT prior to commencement of service.[48]

---

[43] *Id.* P 32.

[44] *Id.* P 31.

[45] ITCLEC Transmittal at 11 (referencing LECC Negotiated Rate Application, Docket No. ER13-1979-000, at 11-13 (filed July 15, 2013)).

[46] *Id*. at 11.

[47] *Id*. at 11-12.

[48] *Id*. at 12.

25. ITCLEC also states that it will ensure that books and records for the Project will comply with the Uniform System of Accounts in Part 101 of the Commission's regulations and will be subject to examination as required in Part 41 of the regulations, file financial statements and reports in accordance with Part 141.14 and 141.15 of the Commission's regulations, and employ an independent auditor to audit its books and records.[49]

iv. Commission Determination

26. We acknowledge ITCLEC's commitment to turn over operational control of the Project to PJM and to engage in an open solicitation and capacity allocation process consistent with the Policy Statement. We will reserve judgment on whether that open solicitation and capacity allocation process was not unduly discriminatory, pending ITCLEC's subsequent section 205 filing providing the details necessary to judge the open solicitation and capacity allocation process and to ITCLEC filing, through eTariff, a rate schedule for service under the PJM OATT prior to commencement of service.

27. Consistent with *Chinook*, once the Project has commenced operation, ITCLEC must ensure that: (1) it maintains books and records for the Project that comply with the Uniform System of Accounts found in Part 101 of the Commission's regulations,[50] subject to examination as required in Part 41 of the regulations;[51] and (2) its books and records are audited by an independent auditor.[52] These commitments will assist the Commission in carrying out its oversight role.

c. Factor Three: Undue Preference and Affiliate Concerns

28. In the context of merchant transmission, Commission concerns regarding the potential for affiliate abuse arise when the merchant transmission owner is affiliated with either the anchor customer, participants in the open season or solicitation, and/or customers that subsequently take service on the merchant transmission line. The Commission noted in the Policy Statement that it will continue to expect an affirmative showing that the affiliate is not afforded an undue preference. The Commission noted

---

[49] *Id*.

[50] 18 C.F.R. pt. 101 (2014).

[51] 18 C.F.R. pt. 41 (2014).

[52] *Chinook*, 126 FERC ¶ 61,134 at P 62; *Champlain Hudson*, 132 FERC ¶ 61,006 at P 48; *Tres Amigas*, 130 FERC ¶ 61,207 at P 90.

that the developer will bear a high burden to demonstrate that the assignment of capacity to its affiliate and the corresponding treatment of nonaffiliated potential customers is just, reasonable, and not unduly preferential or discriminatory.[53]

i. ITCLEC's Proposal

29. ITCLEC states that none of its affiliates currently owns or operates electric facilities in PJM or IESO, and that the Project will not interconnect with any existing facilities owned by an affiliate.[54] However, as noted above, two subsidiaries of ITC Holdings Corporation have been formed to pursue new transmission investment opportunities in the PJM region, and ITCI is in negotiations to construct and own a new approximately one mile, 345 kV transmission line and related breakers, switches and equipment to interconnect an existing generating plant located in Michigan to a new substation owned by American Electric Power Company, Inc.[55]

30. ITCLEC asserts that it does not anticipate that an affiliate will purchase transmission rights through the open solicitation process, but that in the event that one does, the post-solicitation filing with the Commission will document the facts and circumstances surrounding this allocation of capacity.[56] Consequently, ITCLEC contends that there will be no opportunity for affiliate abuse. ITCLEC states that it will turn over operational control of its facilities to PJM, file electric quarterly reports of its transactions as required of transmission providers, comply with any applicable affiliate rules, and be subject to the Commission's Standards of Conduct to the extent any affiliate takes transmission service on the Project.[57]

ii. Commission Determination

31. We acknowledge ITCLEC's commitment to engage in an open solicitation process and make a future filing with the Commission disclosing the results of the capacity allocation process and describing the process in sufficient detail to demonstrate no affiliate has been afforded undue preference. In addition, we acknowledge ITCLEC's

---

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

[54] ITCLEC Transmittal at 13.

[55] *Id.* at 9 n.18.

[56] *Id.* at 13.

[57] *Id.* at 13-14.

commitment to turn over operational control of its facilities to PJM, file electric quarterly reports of its transactions as required of transmission providers, comply with any applicable affiliate rules, and abide by the Commission's Standards of Conduct to the extent any affiliate takes transmission service on the Project. We accept these commitments as addressing our affiliate preference concerns, subject to the Commission's approval of ITCLEC's subsequent filing demonstrating that the assignment of capacity to any affiliate and the corresponding treatment of nonaffiliated potential customers is just, reasonable, and not unduly preferential or discriminatory.

32. We take note of ITCLEC's active negotiations for affiliate projects in PJM and other RTO/ISO regions. ITCLEC must inform the Commission of any future affiliate ownership of any electric generation, transmission, or distribution assets in PJM, due to the impact that such ownership may have on our analysis, when it makes the required section 205 filing as discussed above.

d. Factor Four: Regional Reliability and Operational Efficiency

33. In order to ensure regional reliability and operational efficiency, the Commission expects that any merchant transmission projects connected to an RTO or ISO turn over operational control to the RTO/ISO.[58] Further, merchant transmission projects, like cost-based transmission projects, are subject to mandatory reliability requirements.[59] Merchant transmission developers are required to comport with all applicable requirements of the North American Electric Reliability Corporation and any regional reliability council in with they are located.

i. ITCLEC's Proposal

34. ITCLEC commits to turn over operational control of the Project to PJM and to comply with all applicable reliability requirements.[60] Additionally, ITCLEC states that it

---

[58] *Chinook,* 126 FERC ¶ 61,134 at P 52.

[59] *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).

[60] ITCLEC Transmittal at 14.

will, consistent with the requirements of Order No. 1000,[61] provide to PJM all information required by PJM's regional planning process.

ii. Commission Determination

35. We acknowledge ITCLEC's commitment to turn over operational control of the Project to PJM and comply with all applicable reliability requirements. We also note that LECC previously filed interconnection applications with PJM. Accordingly, we find that ITCLEC has met the regional reliability and operational efficiency requirement, subject to ITCLEC providing information and data required by the regional planning processes.

B. Waiver Requests

1. ITCLEC's Proposal

36. ITCLEC states that in the Negotiated Rate Order, the Commission granted LECC's request for waiver of the following filing requirements that the Commission found were not applicable to merchant transmission developers: (1) the full reporting requirements of Subparts B and C of Part 35 of the Commission's regulations, except for sections 35.12(a), 35.13(b), 35.15, and 35.16; and (2) Part 141, except for sections 141.14 and 141.15.[62] ITCLEC requests that the Commission confirm that its previous waiver of these provisions remains effective.

2. Commission Determination

37. ITCLEC requests waiver of certain cost-based data filing requirements that the Commission previously granted LECC in the Negotiated Rate Order. Because ITCLEC proposes to charge negotiated rates, we find that the regulations requiring the filing of cost-based data are not applicable. Therefore, for good cause shown and consistent with our prior orders, we will grant waiver of the filing requirements of Subparts B and C of

---

[61] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323, at PP 164-165 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 (2012), *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. South Carolina Pub. Serv. Auth.* v. *FERC*, No. 12-1232, 2014 WL 3973116 (D.C. Cir. Aug. 15, 2014).

[62] ITCLEC Transmittal at 14-15 (referencing Negotiated Rate Order, 144 FERC ¶ 61,203 at PP 30-31).

Part 35 of the Commission's regulations except for sections 35.12(a), 35.13(b), 35.15, and 35.16.[63]

38. We will also grant ITCLEC's request for waiver of Part 141 (including the Form No. 1 filing requirement), with the exception of sections 141.14 and 141.15. The Commission previously granted LECC's request for waiver of the Form No. 1 filing requirement in the Negotiated Rate Order, and has granted waiver of the Part 141 requirements to merchant transmission owners in other Commission proceedings.[64]

The Commission orders:

(A) ITCLEC is hereby granted conditional authority to sell transmission rights on its proposed merchant transmission project at negotiated rates, subject to the Commission's approval of a subsequent section 205 filing, and to ITCLEC's submission of a rate schedule for service under the PJM OATT, as discussed in the body of this order.

(B) The Commission grants ITCLEC'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, and Part 141 of the Commission's regulations, with the exception of sections 141.14 and 141.15, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

---

[63] *Hudson Transmission*, 135 FERC ¶ 61,104 at P 42; *Tres Amigas*, 130 FERC ¶ 61,207 at P 103; *Wyoming Colorado Intertie, LLC*, 127 FERC ¶ 61,125, at P 62 (2009) (*Wyoming*); *Linden VFT, LLC*, 119 FERC ¶ 61,066, at P 42 (2007) (*Linden*).

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