

153 FERC ¶ 61,287  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Tres Amigas, LLC  
Western Interconnect LLC

Docket No. ER15-2647-000

ORDER ACCEPTING AGREEMENTS SUBJECT TO CONDITION, GRANTING  
APPLICATION FOR AUTHORIZATION TO SELL TRANSMISSION SERVICES AT  
NEGOTIATED RATES SUBJECT TO CONDITION, AND GRANTING IN PART  
AND DENYING IN PART REQUEST FOR WAIVERS

(Issued December 10, 2015)

1. On September 11, 2015, as supplemented on October 23, 2015, Tres Amigas, LLC (Tres Amigas) filed transmission service agreements and large generator interconnection agreements (Agreements) between Tres Amigas and three wind generation projects,<sup>1</sup> in connection with a 35-mile, 1,100 MW 345 kV merchant transmission line (Transmission Line). In addition, Western Interconnect LLC (Western Interconnect) submitted an application for authorization to allow Western Interconnect to charge negotiated rates for transmission service over the Transmission Line.<sup>2</sup> In this order, we accept the transmission service agreements and large generator interconnection agreements, subject to condition; grant Western Interconnect's request for negotiated rate authority for the

---

<sup>1</sup> The three wind generations projects are: (1) Broadview Energy KW, LLC (Broadview KW); (2) Broadview Energy JN, LLC (Broadview JN) (together, Broadview Projects); and (3) Grady Wind Energy Center, LLC (Grady Project) (collectively, Wind Projects).

<sup>2</sup> Western Interconnect additionally requests waivers of certain Commission filing requirements, pursuant to section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (2012). In this order we will refer to Tres Amigas and Western Interconnect together as "Applicants."

Transmission Line, also subject to condition; and grant in part and deny in part Western Interconnect's request for waivers, as discussed below.

## **I. Background**

### **A. Applicants**

2. Tres Amigas is a transmission developer formed to develop, own, and operate a merchant transmission project, the Tres Amigas Superstation (Superstation).<sup>3</sup> Pattern Energy Group LP (Pattern) is an independent energy company that develops and constructs energy projects. Pattern is the owner of the Wind Projects. Western Interconnect was formed by Pattern and Tres Amigas for the sole purpose of developing, financing, constructing, and operating the Transmission Line. According to the application, Pattern owns a majority interest in Western Interconnect and Tres Amigas owns a minority.<sup>4</sup>

### **B. The Wind Projects and Transmission Line**

3. In March 2010, the Commission granted Tres Amigas authorization to charge negotiated rates for the Superstation, and approved Tres Amigas' request to allocate up to 50 percent of the Superstation's initial capacity to anchor customers through bilateral contracts, subject to Tres Amigas providing the same rates, terms, and conditions as the anchor customer received to any customer in an open season willing to commit to the same terms.<sup>5</sup> Applicants explain that, immediately after the issuance of *Tres Amigas* in 2010, Tres Amigas began seeking out generators in eastern New Mexico and western Texas to become anchor customers. Applicants further explain that there was interest in the project; however, generators were unable to secure power purchase agreements, which stalled conversations. In 2011, Tres Amigas entered into preliminary negotiations

---

<sup>3</sup> As originally proposed, the Tres Amigas Superstation would link the three asynchronous transmission interconnections in the coterminous United States, and allow power to be transmitted among the three interconnections for the first time. See *Tres Amigas, LLC*, 130 FERC ¶ 61,207, at P 1 (2010) (*Tres Amigas*). The Transmission Line is a planned portion of the Superstation, which will interconnect the Superstation to Public Service Company of New Mexico's (PNM) transmission system at the Blackwater 345 kV switching station (Blackwater Station) in Clovis, New Mexico.

<sup>4</sup> September 11, 2015 Application (Application) at nn.1-2; October 23, 2015 Affidavit of Russell Stidolph at P 12.

<sup>5</sup> See *Tres Amigas*, 130 FERC ¶ 61,207 at PP 61, 88-89, 94.

with National Renewable Resources, LLC (NRS) regarding transmission service for the Wind Projects, which NRS planned to develop near the Superstation to transmit energy through PNM to California. After several months of discussion in 2013, Tres Amigas and NRS negotiated an anchor customer agreement for Tres Amigas to transmit the Wind Projects' output to PNM's transmission system. The term sheet included a transmission service rate of \$27,500/MW-year, for each of the Wind Projects.<sup>6</sup>

4. Applicants explain that Tres Amigas' original plan was for the Wind Projects to become transmission customers of the Superstation, and thereby gain access to the Transmission Line for deliveries to PNM. However, the development of the Wind Projects has progressed at a faster pace than the Superstation and therefore Applicants state that the Wind Projects will require interconnection to and transmission service over the Transmission Line prior to the time that Tres Amigas is ready to finance construction of the Superstation. In order to facilitate the interconnection of the Wind Projects and allow for delivery of their energy ahead of the construction of the Superstation, Tres Amigas entered into a Transmission Construction and Interconnection Agreement with PNM to interconnect the Transmission Line to Blackwater Station and energize the line prior to the Superstation commencing operations.<sup>7</sup>

5. Subsequently, in early 2015, Pattern began discussions with NRS to acquire the Wind Projects, and eventually purchased them in June and October 2015.<sup>8</sup> Applicants explain that Tres Amigas and Pattern formed a new entity, Western Interconnect, to serve as the transmission developer of the Transmission Line because Pattern was concerned that Tres Amigas would have difficulty in financing construction of the Transmission Line since Tres Amigas has no other sources of revenue. Accordingly, Tres Amigas and Pattern agreed to a transaction whereby Pattern and Tres Amigas would form and jointly own Western Interconnect to finance and construct the Transmission Line until such time as Tres Amigas obtains financing and begins construction on the Superstation. In addition, Applicants state that a revised term sheet was negotiated for the transmission service agreements reflecting a new transmission service rate of \$25,000/MW-year.

---

<sup>6</sup> Application at 7; October 23, 2015 Affidavit of Russell Stidolph at PP 6-8.

<sup>7</sup> Application at 8.

<sup>8</sup> According to Applicants, Pattern acquired NRS's interest in the Broadview Projects in June 2015 and the Grady Project in October 2015.

Tres Amigas executed transmission service agreements on these terms with each of the Wind Projects.<sup>9</sup>

## II. Notices and Interventions

6. Notice of Applicants' filing was published in the *Federal Register*, 80 Fed. Reg. 61,204 (2015), with interventions and protests due on or before October 2, 2015. PNM filed a timely motion to intervene.

## III. Discussion

### A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), its timely, unopposed motion to intervene serves to make PNM a party to this proceeding.

### B. Anchor Tenant Agreements

8. In *Tres Amigas*, the Commission accepted Tres Amigas' proposal to allocate up to 50 percent of the Superstation's initial capacity to anchor customers, conditioned upon, among other things, Tres Amigas: (1) making a filing with the Commission describing the process used to identify the anchor customer as well as the details of the agreement, and (2) offering all customers the same deal as any anchor customer, if such customers are willing to agree to the same terms.<sup>10</sup>

---

<sup>9</sup> October 23, 2015 Affidavit of Russell Stidolph at PP 9-15. As explained below, once Tres Amigas has financed and commenced construction of the Superstation, the parties plan for Tres Amigas to purchase Pattern's majority interest in Western Interconnect, and, at that point, Tres Amigas would wholly own the Transmission Line. *Id.*

<sup>10</sup> See *Tres Amigas*, 130 FERC ¶ 61,207 at PP 61, 89. The Commission also stated that Tres Amigas may not withhold any capacity that is not committed to an anchor customer during the open season process, either through the creation of tranches of capacity or by offering less than the full amount of available capacity in any auction. *Id.* PP 61, 89.

## 1. Applicants' Proposal

9. Applicants request that the Commission accept the three transmission service agreements between Tres Amigas and each of the Wind Projects as anchor tenant agreements under *Tres Amigas*.<sup>11</sup> Applicants also request that the Commission accept three corresponding large generator interconnection agreements between Tres Amigas and the respective Wind Projects.

10. Applicants explain that the transmission service agreements between Tres Amigas and the Wind Projects are entered into pursuant to authorization granted in *Tres Amigas*.<sup>12</sup> Specifically, Tres Amigas explains that it seeks to allocate 497 MW out of the Transmission Line's 1,100 MW total capacity (i.e., less than 50 percent) to the Wind Projects as anchor tenants.<sup>13</sup> Applicants further explain that this transaction is subject to Tres Amigas holding a transparent open season to allocate the remaining available capacity over the Transmission Line not committed under the transmission service agreements to other customers willing to accept the same rates, terms, and conditions offered to the anchor customers. Applicants state that Tres Amigas will hold the open season in late 2015 or early 2016. Additionally, Applicants state that an independent entity will assist in the design and administration of the open season, will audit the results, and prepare and file a report with the Commission attesting to the process.<sup>14</sup>

11. Tres Amigas notes that, in *Tres Amigas*, it committed not to enter into any bilateral contract with an anchor customer without first making an informational filing with the Commission describing the process used to enter into such contract, identifying the buyer

---

<sup>11</sup> Application at 11-12, 22 (citing *Tres Amigas*, 130 FERC ¶ 61,207 at PP 61, 89).

<sup>12</sup> *Id.* at 12-13, 22. As discussed in more detail below, Applicants' intention is that Tres Amigas will assign the Agreements to Western Interconnect for the time frame that Western Interconnect serves as the transmission provider for the Transmission Line. *Id.* at 14.

<sup>13</sup> The transmission service agreements are: Service Agreement No. 1 with Broadview JN for 167 MW; Service Agreement No. 2 with Broadview KW for 130 MW; and Service Agreement No. 3 with Grady Wind for 200 MW. The transmission service agreements provide for firm point-to-point transmission service over the Transmission Line from the point of interconnection of each wind project to the PNM Blackwater Station, over an initial 25 year term starting on January 1, 2017. *Id.* at 22.

<sup>14</sup> *Id.* at 12-13.

under the agreement, and providing a description of the material terms. Tres Amigas requests that the instant section 205 filing of the transmission service agreements be treated as the filing required by *Tres Amigas*<sup>15</sup> in light of the timing needs of the Wind Projects.

12. Tres Amigas also proposes to enter into three corresponding large generator interconnection agreements with each of the Wind Projects. The large generator interconnection agreements provide for the interconnection of the Wind Projects to the Transmission Line. The large generator interconnection agreements for Broadview JN, Broadview KW, and Grady Wind are designated as Service Agreement Nos. 4, 5, and 6, respectively.<sup>16</sup>

## 2. Commission Determination

13. We will accept the transmission service agreements and large generator interconnection agreements between Tres Amigas and the Wind Projects, subject to condition, as set forth in our discussion below addressing the request for negotiated rate authority.<sup>17</sup> The transmission service agreements are consistent with the Commission's prior authorization allowing Tres Amigas to enter into bilateral anchor customer agreements under its existing negotiated rate authority.

14. The Commission previously allowed Tres Amigas to enter into bilateral agreements with anchor customers but, consistent with *Chinook*,<sup>18</sup> conditioned Tres Amigas' negotiated rate authority on it providing the same rate and terms offered to anchor customers to any customer in an open season willing to commit to the same terms. The Commission stated that the open season process in concert with Tres Amigas' future filing of an independently audited post-open season report will ensure that no undue discrimination occurs.<sup>19</sup> Further, in authorizing Tres Amigas to enter into bilateral

---

<sup>15</sup> *Id.* at 13 (citing *Tres Amigas*, 130 FERC ¶ 61,207 at PP 23, 89).

<sup>16</sup> *Id.* at 23.

<sup>17</sup> The Commission can revise a proposal filed under section 205 of the FPA as long as the filing utility accepts the change. *See City of Winnfield v. FERC*, 744 F.2d 871, 875-77 (D.C. Cir. 1984). The filing utility is free to indicate that it is unwilling to accede to the Commission's conditions by withdrawing its filing.

<sup>18</sup> *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134 (2009) (*Chinook*).

<sup>19</sup> *Tres Amigas*, 130 FERC ¶ 61,207 at P 88.

agreements with anchor customers, the Commission required Tres Amigas to make a filing with the Commission describing the process used to select the anchor customers, as well as the details of the anchor customer agreements.<sup>20</sup>

15. We find that Tres Amigas' transmission service agreements with anchor customers satisfy the criteria established in *Tres Amigas*.<sup>21</sup> Specifically, Tres Amigas has described the process used to select the anchor customers, as well as the details of the agreements under which it will allocate less than 50 percent of the initial capacity of the Transmission Line. Further, Tres Amigas commits to conduct an open season, where potential customers are offered the same rates, terms, and conditions as the anchor customers, with the help of an independent third party administrator, and to file an independently audited post-open season report. Finally, no party protested the transmission service agreements.

16. However, Applicants propose to transfer the Agreements from Tres Amigas to Western Interconnect. As discussed further below, we find that Western Interconnect must take additional steps if it is to satisfy the Commission's four-factor analysis for negotiated rate authority to become the transmission provider of the Transmission Line. Accordingly, we will accept the transmission service agreements and large generator interconnection agreements for filing, subject to the outcome of Western Interconnect's request for negotiated rate authority. Tres Amigas must make any revisions to the agreements necessary to recognize the outcome of Western Interconnect's request for negotiated rate authority.

---

<sup>20</sup> The Commission explained that such a filing "will allow customers to inform the Commission if they believe that there was undue discrimination or undue preference involved in the assignment of transmission rights through such an agreement, while also allowing Applicant the flexibility to negotiate such agreements to meet its financing needs." *Id.* PP 61, 89.

<sup>21</sup> We note that the final rates in the transmission service agreements were negotiated with an affiliate because Tres Amigas re-negotiated the rates with the Wind Projects after Tres Amigas and Pattern stated their intention to create Western Interconnect to be the transmission developer of the Transmission Line. However, the Commission did not prohibit Tres Amigas from entering into bilateral contracts with affiliates. *Id.* P 94.

**C. Negotiated Rate Authority**

**1. Applicants' Proposal**

17. Applicants seek authorization to allow Western Interconnect to charge negotiated rates for the sale of transmission service over the Transmission Line either by using Tres Amigas' prior authorization or by obtaining its own authorization. Applicants explain that, in order to provide the necessary security to the lenders that will finance the construction of the Transmission Line, it is necessary for the transmission service agreements, which provide the revenue support for the repayment of the debt issued to finance construction, to be assigned by Tres Amigas to Western Interconnect. As a result of this proposed transaction, Western Interconnect would become the transmission provider under the Agreements.<sup>22</sup>

18. Applicants state that the assignment of the Agreements to Western Interconnect is temporary, as it will only be during the time that Western Interconnect serves as the transmission provider for the Transmission Line. Applicants explain that, once the Superstation has been financed and Tres Amigas has commenced construction, Tres Amigas intends to purchase Pattern's majority interest in the Transmission Line, subject to the contractual rights of the Wind Projects to remain interconnected with and move energy over the Transmission Line. The Agreements would continue to be in place after Tres Amigas purchases Pattern's majority interest in Western Interconnect.<sup>23</sup>

19. Applicants acknowledge that prior to such transfer Western Interconnect must obtain negotiated rate authority in order to become the transmission provider. Accordingly, Western Interconnect requests authorization to use Tres Amigas' existing negotiated rate authority so that the Agreements may be transferred in a future transaction, and Western Interconnect may serve as the transmission provider. Alternatively, Western Interconnect requests that the Commission grant it negotiated rate authority so that it may serve as the transmission provider.<sup>24</sup> Applicants argue that

---

<sup>22</sup> Application at 14.

<sup>23</sup> *Id.* at 9, 14.

<sup>24</sup> *Id.* at 14.

Western Interconnect satisfies all four factors that the Commission considers in granting negotiated rate authority.<sup>25</sup>

## 2. Commission Determination

20. As an initial matter, we will deny Applicants' request to transfer Tres Amigas' existing negotiated rate authority to Western Interconnect for the Transmission Line, given the change in ownership structure of the Transmission Line.<sup>26</sup> Accordingly, we will conduct a *de novo* four-factor analysis to determine whether Western Interconnect meets the Commission's requirements for negotiated rate authority.

21. For the reasons discussed below, we conclude that Western Interconnect has not yet satisfied the undue preference, including affiliate preference, factor (the third factor). However, Western Interconnect may take additional steps to demonstrate that no undue preference is given to affiliates in allocating the initial capacity. Therefore, we will grant Western Interconnect's request for authorization to charge negotiated rates for transmission service over the Transmission Line subject to condition.

### a. Four-Factor Analysis

22. 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.<sup>27</sup> This approach simultaneously acknowledges the financing realities faced by merchant transmission developers and 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 transmission projects that can differ substantially from one project to the next.

---

<sup>25</sup> *Id.* at 14-15 (citing *Lake Erie CleanPower Connector*, 144 FERC ¶ 61,203, at P 6 (2013); *Hudson Transmission Partners, LLC*, 135 FERC ¶ 61,104, at P 14 (2011); *Chinook*, 126 FERC ¶ 61,134 at P 54).

<sup>26</sup> *See Zephyr Power Transmission, LLC*, 139 FERC ¶ 61,020 (2012) (denying the transfer of negotiated rate authority on the basis that, while the basic structure of the project remained the same, the change in upstream ownership of the project constituted changed circumstances).

<sup>27</sup> *Chinook*, 126 FERC ¶ 61,134 at P 37.

**i. Justness and Reasonableness of Rates**

23. To approve negotiated rates for a transmission project, the Commission must find that the rates are just and reasonable.<sup>28</sup> 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.

**(a) Applicants' Proposal**

24. Applicants state that Western Interconnect has neither a franchised territory nor captive customers, will assume all market risk from the construction, and does not own or operate transmission assets in the area served by the Transmission Line.<sup>29</sup> Therefore, according to Applicants, the Commission need not be concerned about cross-subsidization issues with respect to the payments made by the Wind Projects to Western Interconnect.<sup>30</sup>

25. Further, Applicants aver that Western Interconnect is not capable of erecting barriers to entry among competitors, nor does it have any incentive to withhold transmission capacity on the Transmission Line from the market. Applicants state that the capacity of the projects is or will be fully subscribed to their California utility off-takers through 2036 and 2041, respectively, so Pattern has no incentive to have

---

<sup>28</sup> See *Champlain Hudson Power Express, Inc.*, 132 FERC ¶ 61,006, at P 17 (2010).

<sup>29</sup> Applicants state that Pattern and its affiliates currently own electric generating facilities in California and Nevada totaling 518 MW, the output of each is fully subscribed through 2025, but they do not own other generation in the Western Interconnection. Application at 16-18.

<sup>30</sup> *Id.*

Western Interconnect withhold capacity on the Transmission Line to gain a competitive advantage over competitors.<sup>31</sup>

**(b) Commission Determination**

26. We conclude that Western Interconnect satisfies the justness and reasonableness of rates factor for the Transmission Line. We agree that Western Interconnect assumes the full market risk for the cost of constructing the Transmission Line. Additionally, neither Western Interconnect nor any of its affiliates owns or operates transmission assets in the same area served by the Transmission Line. Moreover, neither Western Interconnect nor any of its affiliates has captive customers. Thus, we find that Western Interconnect has assumed the full market risk for the Transmission Line.

27. In addition, we find that Western Interconnect is not capable of erecting any barriers to entry among competitors, and that Western Interconnect would not have any incentive to withhold capacity. Under the proposal, Western Interconnect proposes to allocate less than 50 percent of the initial capacity to affiliates, and commits to offer the same rates, terms, and conditions to other customers in an open season. Indeed, because Western Interconnect's affiliates do not have any additional generation resources in the area, Western Interconnect has an incentive to sell the remaining capacity to other customers. Accordingly, we find Western Interconnect satisfies the first factor of the four-factor test for the Transmission Line.

**ii. Potential for Undue Discrimination**

28. 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 Open Access Transmission Tariff (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).<sup>32</sup> 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.<sup>33</sup> Specifically, the developer must: (1) broadly solicit interest in the

---

<sup>31</sup> *Id.*

<sup>32</sup> *Chinook*, 126 FERC ¶ 61,134 at P 40.

<sup>33</sup> *Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects; Priority Rights to New Participant-Funded Transmission*, 142 FERC ¶ 61,038, at PP 15, 23 (2013) (Policy Statement).

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.<sup>34</sup>

29. In the Policy Statement, the Commission explained that applicants must issue broad notice of the project in a manner that ensures that all potential and interested customers are informed of the proposed project, such as by placing notice in trade magazines or regional energy publications.<sup>35</sup> 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).<sup>36</sup> 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.<sup>37</sup>

30. Additionally, in the Policy Statement, the Commission explained that merchant developers must continue 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

---

<sup>34</sup> *Id.* P 16.

<sup>35</sup> *Id.* P 23.

<sup>36</sup> *Id.* P 20.

<sup>37</sup> *Id.* PP 24-27.

listed in the Policy Statement in order to provide transparency to the Commission and interested parties.<sup>38</sup> 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 fact not unduly discriminatory or preferential, and resulted in rates, terms, and conditions that are just and reasonable.<sup>39</sup>

(a) **Applicants' Proposal**

31. With regard to the undue discrimination factor, Applicants state that Western Interconnect will have no ability to exercise undue discrimination against potential third parties seeking access to the available capacity over the Transmission Line. Applicants explain that Tres Amigas has previously committed to an open season process to allocate the full capacity of the Transmission Line not committed under the transmission service agreements, and will hold it in late 2015 or early 2016 with the assistance of an independent administrator. Tres Amigas has also committed to filing an independent post-open season report describing the results of the open season. Applicants also state that affiliates of Pattern (and Western Interconnect) will not participate in the open season process and no affiliate will seek to purchase any additional capacity over the Transmission Line without prior Commission approval. Moreover, Applicants state that Tres Amigas will be responsible for the marketing of all available capacity over the Transmission Line after the open season has been completed.<sup>40</sup>

32. In addition, Western Interconnect also commits to file an OATT for service over the Transmission Line at least 60 days before the Transmission Line is energized if it is the transmission provider of the Transmission Line at the time (i.e., if the Transmission Line and the transmission service agreements have not been assigned back to Tres Amigas before energization occurs, this responsibility would remain with Tres Amigas).<sup>41</sup>

---

<sup>38</sup> *Id.* P 30.

<sup>39</sup> *Id.* P 32.

<sup>40</sup> Application at 18-19.

<sup>41</sup> *Id.* at 19. Tres Amigas has already committed to filing an OATT in the context of obtaining its negotiated rate authority in *Tres Amigas*, and that OATT will govern service over the Transmission Line. *Id.*

(b) **Commission Determination**

33. The fundamental concern underlying the second factor of the Commission's four-factor analysis for negotiated rate authority is that new capacity should be allocated in a not unduly discriminatory manner.<sup>42</sup> The Commission relies upon an open season and a post-open season report as a means to provide transparency in the allocation of initial capacity and ensure against undue discrimination among potential customers in the award of transmission capacity.<sup>43</sup> Alternatively, the Commission also allows merchant transmission developers to award up to 100 percent of a project's capacity to a single customer, including an affiliate. However, the developer must demonstrate that in allocating the initial capacity it has broadly solicited interest in the project from potential customers; and satisfied the solicitation, selection, and negotiation process criteria.

34. As noted above, in granting Tres Amigas negotiated rate authority, the Commission previously approved the proposal by Tres Amigas to allocate up to 50 percent of the initial capacity to anchor customers. As a result, Tres Amigas solicited the interest of potential anchor customers and eventually identified the Wind Projects (when they were owned by NRS) as the initial anchor customers. Further, at that time Tres Amigas and NRS negotiated the terms of the initial anchor customer agreements, including the amount of capacity.<sup>44</sup> Accordingly, we find that the initial capacity was allocated by Tres Amigas in a not unduly discriminatory manner. As described in the application, Tres Amigas intends to transfer the anchor customer agreements to Western Interconnect in a future transaction. Given these circumstances, whereby anchor customers were previously identified and the initial allocation made, we find no undue discrimination based upon the prior actions of Tres Amigas, in light of the future commitments by Western Interconnect with respect to the open season.

35. Specifically, we find that Western Interconnect's commitments to allocate the remaining capacity through a transparent open season satisfy the Commission's criteria. First, Western Interconnect commits to hold an open season in late 2015 or 2016 to allocate the remaining capacity, and to offer the same rates, terms, and conditions as

---

<sup>42</sup> Policy Statement, 142 FERC ¶ 61,038 at P 15.

<sup>43</sup> *Id.* P 4.

<sup>44</sup> We note that, while the re-negotiation between Tres Amigas and Pattern resulted in a decreased rate for transmission service, the initial amount of capacity allocated remained unchanged.

reflected in the anchor customer agreements to any participants in the open season.<sup>45</sup> Western Interconnect also commits to file an independently-conducted post-open season report describing the results of the open season. Finally, Western Interconnect commits to file an OATT at least 60 days before the Transmission Line is energized. We find that Western Interconnect's open season to allocate the remaining initial capacity meets the Commission's criteria.

**iii. Potential for Undue Preference, Including Affiliate Preference**

36. 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. In the Policy Statement, the Commission stated that it would allow merchant transmission developers to award up to 100 percent of a project's capacity to a single customer, including an affiliate, but that it would expect an affirmative showing that the affiliate is not afforded an undue preference. The Commission noted 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.

**(a) Applicants' Proposal**

37. Applicants also argue that there is no potential for undue preference, including any affiliate preference. Applicants note that, in order to facilitate the financing of the Transmission Line, an affiliate relationship will exist between Western Interconnect and the Wind Projects until Tres Amigas secures construction financing for the next phase of the Superstation, at which point Pattern is required to sell its interest in Western Interconnect to Tres Amigas. However, according to Applicants, there is no potential for preferential treatment or abuse of the affiliate relationship during this interim period because: (1) the transmission service agreements were negotiated at arm's length between Tres Amigas and Pattern and will be in effect after Tres Amigas re-acquires Pattern's interest in Western Interconnect and assumes independent responsibility as the transmission provider; (2) Tres Amigas will offer the same rates, terms, and conditions set forth in the transmission service agreements to any participant in the open season process; and (3) Pattern will not participate in the open season and not purchase any other transmission service over the Transmission Line without the Commission's prior

---

<sup>45</sup> Applicants state that Pattern will not participate in the open season without prior Commission approval. Application at 19-20.

approval during the time prior to the reassignment of the Transmission Line and the transmission service agreements back to Tres Amigas. Applicants state that these safeguards should address the Commission's concern with undue preference that a transmission owner may have an incentive to give one customer a more favorable deal than others.<sup>46</sup>

**(b) Commission Determination**

38. When allocating capacity to affiliates there is a high burden to demonstrate that the assignment of capacity to affiliates and the corresponding treatment of non-affiliated potential customers are just, reasonable, and not unduly preferential or discriminatory.<sup>47</sup> Applicants assert that no preferential treatment or abuse of the affiliate relationship exists because, among other things, the transmission service agreements were negotiated at arm's length between Tres Amigas and Pattern and the transmission service agreements will continue to be in effect after Tres Amigas acquires Pattern's interest in the Transmission Line.

39. We find, however, that Western Interconnect did not demonstrate that the re-negotiation of the anchor customer agreements was conducted at arm's length. Based on the record, it is evident that the negotiation of the terms for transmission service occurred between affiliates, because the negotiations between Tres Amigas and the Wind Projects occurred after Tres Amigas and Pattern (the owner of the Wind Projects) had agreed to form Western Interconnect to become the merchant transmission provider, with Pattern as the majority owner. Therefore, we find that the rates, terms, and conditions of the anchor customer agreements which Western Interconnect proposes to administer were not negotiated at arm's length.

40. Western Interconnect states that other customers will be offered the same rates, terms, and conditions and that Pattern will not participate in the open season that will be conducted by Tres Amigas. While this helps to ensure that corresponding treatment of non-affiliated potential customers would be just, reasonable, and not unduly preferential or discriminatory in the future, these steps are not sufficient to demonstrate that there was no undue preference given in the initial allocation of capacity to the Wind Projects based upon the affiliate relationship of the parties during re-negotiation. Accordingly, we conclude that Western Interconnect does not, at this time, satisfy the undue preference factor of the four-factor analysis.

---

<sup>46</sup> *Id.* (citing *Tres Amigas*, 130 FERC ¶ 61,207 at P 94).

<sup>47</sup> Policy Statement, 142 FERC ¶ 61,038 at P 34.

41. However, Western Interconnect may take additional steps to remedy our concerns regarding the undue preference factor. Therefore, we grant Western Interconnect's request for negotiated rate authority for the Transmission Line subject to the condition that Western Interconnect submit a compliance filing, within 30 days of the date of this order, to inform the Commission how it intends to proceed to satisfy the four-factor analysis for negotiated rate authority.

42. In its compliance filing, Western Interconnect could remedy our concerns of undue preference to affiliates in several ways. For example, Western Interconnect could: (1) revise the transmission service agreements to adopt the rates, terms, and conditions that resulted from the original arm's length negotiation between Tres Amigas and the Wind Projects; or (2) engage in an open solicitation of interest or conduct an open season to identify potential transmission customers for the full 100 percent of the initial capacity of the Transmission Line, consistent with the criteria identified in the Policy Statement.<sup>48</sup> If Western Interconnect chooses to allocate the full initial capacity, then it must do so consistent with Commission policy, including submitting any additional appropriate filings with the Commission.

**iv. Regional Reliability and Operational Efficiency**

43. 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. Further, merchant transmission projects, like cost-based transmission projects, are subject to mandatory reliability requirements. Merchant transmission developers are required to comport with all applicable requirements of the North American Electric Reliability Corporation (NERC) and any regional reliability council in which they are located.

**(a) Applicants' Proposal**

44. Western Interconnect also commits to satisfy all applicable reliability standards, including the applicable NERC and Western Electricity Coordinating Council (WECC) reliability requirements and procedures. Western Interconnect states that it will also participate in regional transmission planning organizations and file a transmission planning process in its OATT.<sup>49</sup>

---

<sup>48</sup> See *id.* PP 16, 23-28; *Chinook*, 126 FERC ¶ 61,134 at PP 40-41. We note that under this second approach, the Wind Projects and/or Pattern would be eligible to participate in such open solicitation or open season.

<sup>49</sup> Application at 21-22.

(b) **Commission Determination**

45. We find that Western Interconnect satisfies the regional reliability and operational efficiency factor of the four-factor analysis. Western Interconnect states that it will assume and fulfill all of Tres Amigas' obligations, including complying with all applicable NERC and WECC requirements. Moreover, Western Interconnect commits to participate in all regional transmission planning processes; this includes those required by Order Nos. 890<sup>50</sup> and 1000.<sup>51</sup>

**D. Request for Waivers**

**1. Applicants' Proposal**

46. Western Interconnect requests that the Commission also waive certain filing and reporting requirements typically accorded to merchant transmission owners.<sup>52</sup> Specifically, Western Interconnect requests waiver of 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 waiver of the requirements of sections 41.10 through 41.12 and Parts 101 and 141 of the Commission's regulations with the exception of sections 141.14 and 141.15.

47. Western Interconnect also requests a one-time waiver of the requirements of section 204<sup>53</sup> and Part 34<sup>54</sup> of the Commission's regulations with respect to the

---

<sup>50</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, 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, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

<sup>51</sup> *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

<sup>52</sup> Application at 23.

<sup>53</sup> 16 U.S.C. § 824c (2012).

<sup>54</sup> 18 C.F.R. Part 34 (2015).

construction financing of the Transmission Line.<sup>55</sup> Western Interconnect states that, while the Commission has in the past rejected a request by a merchant transmission developer for blanket authorizations for all future issuances of securities and assumptions of liability,<sup>56</sup> Western Interconnect seeks a more limited, one-time waiver applicable to the construction financing of the Transmission Line.<sup>57</sup> In support, Western Interconnect states that it does not and will not have a franchised service territory or captive customers, will not be providing transmission service at cost-based rates, and does not currently have any transmission service customers that could be affected by the financing other than the Wind Projects owned by Pattern. Therefore, Western Interconnect contends that a one-time waiver of the Part 34 requirements is justified.<sup>58</sup> Further, according to Western Interconnect, there are no public interest considerations that would require the Commission to pre-approve the construction financing at this time. In addition, Western Interconnect asserts that a waiver is consistent with the public interest because the purpose of the waiver is to facilitate completion of construction financing that is necessary to permit the Wind Projects to be built and their renewable energy delivered to markets in California. Western Interconnect notes that any significant delay in the financing would put the Wind Projects at risk of the potential loss of Federal Production Tax Credits. Western Interconnect acknowledges that any subsequent re-financing of the Western Interconnect construction financing or any other securities issuance or assumption of liability subject to section 204 would require prior Commission authorization.<sup>59</sup>

## 2. Commission Determination

48. We will grant in part and deny in part Western Interconnect's request for waiver of certain filing and reporting requirements, subject to the outcome of Western Interconnect fulfilling the conditions set forth in our determination regarding negotiated rate authority. First, because Western Interconnect is 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,

---

<sup>55</sup> Application at 23.

<sup>56</sup> *Id.* at 24 (citing *Montana Alberta Tie, Ltd.*, 116 FERC ¶ 61,071, at P 65 (2006)).

<sup>57</sup> *Id.* at 23-24.

<sup>58</sup> *Id.* (citing *Bishop Hill Interconnection LLC*, 138 FERC ¶ 61,159, at P 29 (2012)).

<sup>59</sup> *Id.*

we will waive the filing 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, as requested by Western Interconnect.<sup>60</sup>

49. With respect to Western Interconnect's request for waiver of Part 101 of the Commission's regulations concerning the Uniform System of Accounts, we will deny this request. The Commission has previously found that it is appropriate to deny waiver of these requirements to merchant transmission owners in order to facilitate regulatory oversight.<sup>61</sup> Accordingly, once the Transmission Line has commenced operation, Western Interconnect must ensure it maintains books and records for the Transmission Line that comply with the Uniform System of Accounts found in Part 101 of the Commission's regulations, subject to examination as required in Part 41 of the regulations.<sup>62</sup>

50. We will grant Western Interconnect's request for waiver of Part 141 of the Commission's regulations with the exception of sections 141.14 and 141.15, concerning the Form No. 1 filing requirements. The Commission has previously granted waiver of the Form No. 1 filing requirements to merchant transmission owners.<sup>63</sup> As to Western Interconnect's request for waiver of sections 41.10 through 41.12, we will also grant this request because those sections pertain to Form No. 1 filing requirements in Part 141, which we also waive above.<sup>64</sup>

51. With respect to Western Interconnect's request for a one-time waiver of section 204 and Part 34, we will treat this waiver as a request for blanket authorization of Part 34 under the ownership structure and circumstances as proposed by Western

---

<sup>60</sup> In the past, the Commission has granted waivers of Subparts B and C of Part 35 with the exception of sections 35.12(a), 35.13(b), 35.15, and 35.16. *See, e.g., Sea Breeze Pacific Juan de Fuca Cable, LP*, 112 FERC ¶ 61,295, at P 35, 38 (2005).

<sup>61</sup> *See Neptune Regional Transmission Sys., LLC*, 139 FERC ¶ 61,110, at PP 13-12 (2012) (*Neptune*).

<sup>62</sup> 18 C.F.R. Part 41 (2015).

<sup>63</sup> *See Lucky Corridor, LLC*, 151 FERC ¶ 61,072 (2015); *Neptune*, 139 FERC ¶ 61,110.

<sup>64</sup> *See Maine GenLead, LLC*, 146 FERC ¶ 61,223 (2014); *Energia Sierra Juarez U.S. Transmission, LLC*, 149 FERC ¶ 61,052 (2014).

Interconnect, as discussed below.<sup>65</sup> A review of the legislative history pertaining to section 204 of the FPA indicates that the section was intended to protect the public from unsound financial choices by public utilities. As the Commission previously has noted, section 204 serves to ensure that public utilities do not, by issuing securities or assuming obligations or liabilities, put at risk their ability to provide service to customers that depend on that service.<sup>66</sup>

52. Western Interconnect has requested authorization as part of the financing arrangements in connection with the proposed temporary change in ownership of the Transmission Line. Western Interconnect will not be a traditional public utility with cost-based rates and captive customers who depend on transmission service over the Transmission Line. Furthermore, if Western Interconnect elects to revert to the rates, terms, and conditions that resulted from Tres Amigas' original arm's length negotiation with the Wind Projects (i.e., the negotiation that resulted prior to the existence of an affiliate relationship), as discussed above, Western Interconnect will be a merchant transmission-only entity whose only customers are its own affiliates. Thus, in that situation, there would be no captive customers whose service would be put at risk or whose rates would be adversely affected by Western Interconnect's issuance of securities. Under this proposed structure, the only customers that would be adversely affected would be affiliated with Western Interconnect. Accordingly, we find it appropriate to grant Western Interconnect's request for blanket authorization in the event that Western Interconnect is a merchant transmission-only entity that serves only its own affiliates, subject to Western Interconnect fulfilling the conditions set forth in our determination regarding negotiated rate authority.

53. We clarify that the Commission may revoke blanket authorization where the service provided changed, i.e., if a non-affiliated entity is granted service over the Transmission Line. Western Interconnect must notify the Commission of a change in status, i.e., if the ownership of the Transmission Line changes or if a non-affiliated entity becomes a customer using the facilities. In such a case, Western Interconnect would no longer qualify for blanket authorization.

---

<sup>65</sup> See *Fla. Keys Elec. Coop.*, 83 FERC ¶ 61,049 (1998) ("Since we cannot waive the statutory requirements of Section 204, we will construe Florida Keys' filing as a request for blanket authorization of securities issuances or assumptions of liabilities").

<sup>66</sup> *Maine GenLead, LLC*, 152 FERC ¶ 61,015, at PP 8-10 (2015).

The Commission orders:

(A) The transmission service agreements are hereby accepted for filing, subject to condition, as discussed in the body of this order.

(B) The large generator interconnection agreements are hereby accepted for filing, subject to condition, as discussed in the body of this order.

(C) Tres Amigas is hereby directed to make any necessary compliance filings to revise the transmission service agreements and large generator interconnection agreements, as discussed in the body of this order.

(D) Western Interconnect's request for authority to sell transmission rights at negotiated rates is hereby granted, subject to condition, as discussed in the body of this order.

(E) Western Interconnect's request for waivers is hereby granted in part and denied in part, as discussed in the body of this order.

(F) Western Interconnect is hereby directed to make a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.