

155 FERC ¶ 61,252
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Western Spirit Clean Line LLC

Docket No. ER16-1405-000

ORDER CONDITIONALLY AUTHORIZING NEGOTIATED RATE PROPOSAL
AND GRANTING WAIVERS

(Issued June 13, 2016)

1. On April 13, 2016, Western Spirit Clean Line LLC (Western Spirit) filed a request for authorization to charge negotiated rates for transmission service on a proposed high-voltage alternating current (HVAC) merchant transmission project (Project) and for waiver of certain Commission requirements. In this order, the Commission conditionally authorizes Western Spirit to charge negotiated rates and grants Western Spirit's request for waiver of certain Commission requirements.¹

I. Background

A. Applicant

2. Western Spirit states that it is a wholly-owned subsidiary of Western Spirit Clean Line Holdings, LLC, a Delaware limited liability company, which is a wholly-owned subsidiary of Clean Line Energy Partners LLC (Clean Line). Western Spirit also notes

¹ The Commission's precedent has distinguished merchant transmission projects from traditional public utilities. The developers of merchant transmission projects assume all of the market risk of a project and have no captive customers from which to recover the project's cost, unlike public utilities. On a case-by-case basis, the Commission has accordingly allowed merchant transmission projects to be priced based on negotiated rates and granted certain waivers. *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*).

that the primary owners of Clean Line are ZAM Venture, L.P., GridAmerica Holdings, Inc. (GridAmerica), and Clean Grid Holdings LLC (Clean Grid). Clean Grid is a subsidiary of Bluescape Resources Company LLC, described as a private independent energy holding company primarily focused on unconventional hydrocarbon opportunities and energy-related private equity investments; GridAmerica is a subsidiary of National Grid USA, a subsidiary of National Grid plc.

3. Western Spirit also notes that Clean Line has four other high voltage transmission line projects under development in different regions of the United States, through its wholly-owned direct and indirect subsidiaries: (1) Rock Island Clean Line, an approximately 500-mile high voltage direct current (HVDC) transmission line to transmit up to 3,500 MW of renewable power from northeastern Iowa to load centers in Illinois and eastwards; (2) Plains and Eastern Project, an approximately 720-mile HVDC line to transmit up to 4,000 MW of renewable power from the Oklahoma and Texas panhandles to the Midcontinent Independent System Operator, Inc. South region and the Tennessee Valley Authority; (3) Grain Belt Project, an approximately 800-mile HVDC line that will transmit up to 4,000 MW of renewable power from southwestern Kansas to Missouri and southwestern Indiana; and (4) Centennial West Clean Line (Centennial West), an approximately 900-mile HVDC line to transmit up to 3,500 MW of renewable power from eastern New Mexico and west-central Arizona to load centers in the southwest, including California.

B. Description of the Project

4. Western Spirit's Project is a planned 140-mile, single circuit 345 kV HVAC transmission line, capable of delivering up to 1,000 MW of power from east-central New Mexico to markets in the western United States. The Project will originate at a new substation in Torrance County or Guadalupe County, New Mexico, and terminate northwest of the origin at Public Service Company of New Mexico's (PNM) Rio Puerco 345 kV substation outside Albuquerque. Western Spirit states that it anticipates the Project's development and construction costs to be approximately \$200 million. Western Spirit states that it is currently in the development and permitting phase, having invested more than \$2.9 million, and it expects to commence construction as early as the first quarter of 2018, and place the Project in service as early as the fourth quarter of 2018.²

² Application at 6.

5. Western Spirit notes that the Project was originally identified by the New Mexico Renewable Energy Transmission Authority (RETA).³ RETA will be the owner of the Project, while RETA and Western Spirit will jointly develop the project, and all of the capacity of the Project will be assigned to Western Spirit. Given that the Project is not in a Regional Transmission Operator (RTO) or Independent System Operator (ISO) area, Western Spirit states that, once the Project is energized, operational control of the line will be turned over to an unaffiliated third-party transmission provider; and that service on the line will be governed by a Commission-approved Project-specific Open Access Transmission Tariff (OATT) or a Commission-approved non-discriminatory rate schedule for the Project administered under the third-party transmission provider's OATT.⁴

6. According to Western Spirit, the transmission line is designed to facilitate the development and export of wind resources from central New Mexico to power markets in the western United States. Western Spirit states that the Project will enable the development of over 1,000 MW of high capacity wind resources by connecting wind rich east-central New Mexico, which is currently constrained by transmission limits. Western Spirit contends that the Project will make over \$1 billion of investment in renewable generation projects possible, that would otherwise not be built due to existing transmission grid limitations.

C. Application

7. Western Spirit requests Commission approval of its proposal to allocate up to 100 percent of the Project's capacity through bilateral negotiations via its capacity allocation process, subject to its commitment to demonstrate in one or more post-allocation compliance filings that its selection is consistent with Commission regulations. Western Spirit contends that its proposal meets the Commission's four-factor analysis as outlined in *Chinook*,⁵ and that it is in compliance with the Commission's 2013 Policy

³ RETA is a state authority charged with implementing the New Mexico Renewable Energy Authority Transmission Act, designed to pursue ways to facilitate necessary transmission in New Mexico to support the expeditious development of renewable energy in the state. Western Spirit states that RETA is also exempt from regulation as a public utility under section 201(f) of the Federal Power Act (FPA), 16 U.S.C. § 824(f) (2012). Application at 5.

⁴*Id.* at 5.

⁵ *Id.* at 10 (citing *Chinook*, 126 FERC ¶ 61,134 at P 37).

Statement addressing the allocation of capacity for new merchant transmission projects and participant-funded transmission projects.⁶

II. Notice, Intervention, and Responsive Pleadings

8. Notice of Western Spirit's filing was published in the *Federal Register*, 81 Fed. Reg. 23,291 (2016), with interventions and protests due on or before May 4, 2016. RETA filed a timely motion to intervene.

III. Discussion

A. Procedural Matters

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

B. Negotiated Rate Authority

10. In addressing requests for negotiated rate authority from merchant transmission providers, the Commission is committed to fostering the development of such projects, but requires reasonable and meaningful protections to be in place to preserve open access principles and to ensure that the resulting rates for transmission service are just and reasonable.⁷ The Commission's analysis for evaluating negotiated rate applications focuses on four areas of concern: (1) the justness and reasonableness of the rates; (2) the potential for undue discrimination; (3) the potential for undue preference,

⁶ *Id.* at 11 (citing *Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects*, 142 FERC ¶ 61,038 (2013) (Policy Statement)).

⁷ *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 at Ordering Paragraph (A) (2011) (authorizing Hudson Transmission to charge negotiated rates for transmission service).

including affiliate preference; and (4) regional reliability and operational efficiency requirements.⁸

11. The Commission also issued the Policy Statement to clarify and refine its policies governing the allocation of capacity for new merchant transmission projects and new non-incumbent, cost-based, participant-funded transmission projects.⁹ The Commission 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.¹⁰ To the extent the developer complies with these requirements, the Commission will find that the developer has satisfied the second (undue discrimination) and third (undue preference) factors of the four-factor analysis.¹¹

12. 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.¹²

⁸ *Chinook*, 126 FERC ¶ 61,134 at P 37.

⁹ Policy Statement, 142 FERC ¶ 61,038 at P 1.

¹⁰ *Id.* P 16.

¹¹ *Id.* P 15.

¹² *Id.* P 28.

1. Factor One: Just and Reasonable Rates

13. To approve negotiated rates for a transmission project, the Commission must find that the rates are just and reasonable.¹³ 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.

14. Western Spirit asserts that it will assume all market risks associated with the development and construction of the Project, and that it has no captive customers.¹⁴ Western Spirit also states that it is a new entrant to the New Mexico transmission market, and that none of its affiliates currently owns or controls transmission facilities in the same area served by the Project. Western Spirit states that an affiliate, Centennial West, is developing a separate project to interconnect eastern New Mexico to the California Independent System Operator Corporation (CAISO) balancing authority area; Western Spirit contends that both of these projects will be subject to the Commission's jurisdiction and open access requirements. Western Spirit asserts that its affiliation with Centennial West does not raise any market power issues because neither it nor any of its affiliates owns or controls other barriers to entry, or has any incentive to withhold capacity on the Project.¹⁵

15. Additionally, Western Spirit states that, once the Project is completed, operational control will be turned over to an unaffiliated third-party transmission provider, who will operate the line pursuant to a Commission-approved OATT. Western Spirit explains that potential customers could pursue alternative transmission service from incumbent

¹³ See, e.g., *Champlain Hudson*, 132 FERC ¶ 61,006 at P 17.

¹⁴ Although RETA and Western Spirit are jointly developing the transmission line, Western Spirit notes that financing for the Project's construction will come from Western Spirit's investors and eventual customers. Application at 12.

¹⁵ *Id.*

transmission owners operating where the Project will be built at cost-of-service rates (capped at the incumbent utility's cost of expansion); therefore, customers would purchase transmission service from Western Spirit only to the extent that it is cost-effective or more efficient to do so. Finally, Western Spirit notes the existence of competing merchant transmission projects being considered in the area,¹⁶ which it asserts would provide an alternative to the Project. Western Spirit states that these alternatives will discipline its negotiated rates, stating that the Commission has found that the negotiated rate that merchant transmission customers are willing to pay is effectively capped by the difference in the market price for power at either end of the line.¹⁷

16. We conclude that Western Spirit's request for authority to charge negotiated rates for service on the Project meets the first *Chinook* factor, that of just and reasonable rates. Western Spirit will assume the full financial risk for the Project and will have no captive customers, and has no affiliates owning or operating transmission facilities in the same area as the Project.¹⁸ No entity is required to purchase transmission service from Western Spirit; and customers would purchase transmission service from Western Spirit to the extent that it is cost-effective for them to do so since they would have the alternative of purchasing transmission service from incumbent transmission providers operating in the area. Finally, neither Western Spirit nor any of its affiliates owns or controls any barriers to market entry, or has incentive to withhold capacity on the Project. Under these circumstances, we conclude that the requested negotiated rate authority would result in just and reasonable rates for service on the Project.

¹⁶ Western Spirit states that these include the SunZia and Lucky Corridor projects. *Id.* at 13.

¹⁷ *Id.* (citing *Chinook*, 126 FERC ¶ 61,134 at n.26).

¹⁸ Centennial West is a planned transmission line that will originate in northeastern New Mexico, and extend west to interconnect with CAISO in Southern California, whereas Western Spirit will originate in central-eastern New Mexico and extend northwest towards Albuquerque, within the State of New Mexico. Centennial West has not filed with the Commission. *See* <http://www.centennialwestcleanline.com/site/page/location>.

2. Factor Two: Undue Discrimination

17. 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 RTO/ISO context, its commitment to turn operational control over to the RTO or ISO).

18. Pursuant to the Policy Statement, a developer may demonstrate no undue discrimination or preference by conducting an open solicitation that broadly solicits interest in a project from potential customers and, 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.¹⁹

19. Additionally, 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.²⁰ 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 the following: (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).²¹ 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 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.²²

¹⁹ Policy Statement, 142 FERC ¶ 61,038 at P 16.

²⁰ *Id.* P 23.

²¹ *Id.* P 20.

²² *Id.* PP 24-27.

20. In the Policy Statement, the Commission stated that merchant developers must disclose the results of their capacity allocation process for approval under section 205 of the FPA.²³ Developers must 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. Specifically, the developer should describe the criteria that were 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.²⁴ The Commission emphasized in the Policy Statement 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.²⁵ The Commission allows developers discretion in the timing of requests for approval of capacity allocation processes. For example, 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 can demonstrate in a compliance filing filed in response to the Commission's order approving that approach that the developer's selection of customers was consistent with the approved selection process.

21. Western Spirit states that it will conduct an open solicitation process consistent with the Policy Statement and the processes recently approved by the Commission in *Grain Belt* and *Plains and Eastern*.²⁶ Specifically, Western Spirit states that, following outreach, it intends to hold an open solicitation process by conducting an initial screening for potential customers based on various criteria, and those potential customers that satisfy the selection criteria will then be ranked according to the ranking criteria for purposes of phasing negotiations among the selected customers. Western Spirit will then

²³ 16 U.S.C. § 824d (2012).

²⁴ Policy Statement, 142 FERC ¶ 61,038 at P 30.

²⁵ *Id.* P 32.

²⁶ Application at 16 (citing *Grain Belt Express Clean Line LLC*, 147 FERC ¶ 61,098 (2014) (*Grain Belt*), and *Plains and Eastern Clean Line LLC*, 148 FERC ¶ 61,122, at PP 20-25 (2014) (*Plains and Eastern*)).

make a filing with the Commission upon completion of the open solicitation process with requisite details of the process.

22. Western Spirit notes that it has already invested five years raising awareness of the Project in public outreach, through industry conferences and trade publications, and in numerous consultations with tribal, federal, state, and local agencies and commits to continue outreach during the open solicitation. Western Spirit states that it will commence the open solicitation by issuing a detailed notice that will be posted on the Project's website and widely distributed through industry and relevant trade association outlets. The initial notice of open solicitation will describe the technical aspects of the Project, construction schedule, and projected in-service date. Western Spirit explains that it will include details on the customer selection screening factors and ranking criteria, and states that any subsequent changes from the information set forth in the initial notice will be prominently posted on the Project's website and distributed through the Project's listserv in a timely fashion.²⁷

23. Western Spirit further states that it has developed certain objective criteria for selecting and ranking transmission customers seeking to reserve Project capacity, which are intended to incentivize early movers and minimize commercial risks that could adversely affect the Project. Accordingly, Western Spirit proposes to initially screen customers according to the following selection criteria: (1) first mover status, i.e., a potential customer's commitment to pursue a customer agreement within Western Spirit's designated negotiation windows set forth in Western Spirit's open solicitation notice; (2) investment grade credit rating or other standards of creditworthiness; (3) commitment to pay a non-refundable deposit upon execution of a customer agreement; (4) firm transmission service reservation for at least five years; and (5) firm transmission service reservation for at least 50 MW of capacity. Additionally, Western Spirit notes that it might relax the criteria to accommodate more potential customers and that any adjustments will be publicly noticed and equally applied to all potential customers.²⁸

24. Thereafter, Western Spirit proposes to rank the screened customers for negotiations based on the following criteria: (1) level of creditworthiness; (2) early commitment in Project's development cycle; (3) project risk-sharing through phased non-refundable deposits or similar financial commitments during the Project's development cycle; (4) ability of customer to assist with the Project's development needs, including obtaining necessary siting approvals and governmental authorizations; (5) longer term of service; (6) larger capacity reservation; and (7) ability to access Project

²⁷ *Id.* at 15.

²⁸ *Id.* at 16-17.

substations to deliver or receive power. For generation customers only, Western Spirit proposes to use the following specific criteria: completion of generation development milestones; and commercial operation date for generation. For non-generator customers, Western Spirit proposes to rank based on evidence of need for Project capacity, and timing of transmission service commencement date. Western Spirit explains that potential customers will not need to satisfy all of the ranking criteria and that not all criteria will be weighted the same, but commits that they will be applied in a non-discriminatory manner, i.e., customers with an identical ranking characteristic will be afforded the same weight for that particular characteristic (e.g., all customers seeking a 20-year term of service will be ranked the same on the term of service factor).²⁹

25. Western Spirit commits that its filing with the Commission upon completion of the open solicitation process will disclose the results of the capacity allocation process, and demonstrate that the process was consistent with the Policy Statement and the Commission's open access policies, including a post-selection showing that it has satisfied the solicitation, selection, and negotiation process criteria specified in the Policy Statement.³⁰

26. Western Spirit states that the Project is located within the service territory of PNM where there currently is no RTO or ISO. Therefore, Western Spirit states that operational control of the Project will be turned over to a third-party transmission provider, which will operate the line pursuant to a Commission approved OATT, or non-discriminatory rate schedule for the Project.

27. Western Spirit also states that it commits to maintain books and records for the Project that will comply with the Commission's 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,³¹ and to employ an independent auditor to audit its books and records.³²

²⁹ *Id.* at 19-21.

³⁰ *Id.* at 22.

³¹ 18 C.F.R. Pt. 141 (2015).

³² Application at 23.

28. We find Western Spirit's proposal for broad solicitation of potential customers satisfactory. In addition to committing to engage in an open solicitation process, Western Spirit commits to filing detailed post-allocation reports with the Commission disclosing the results of the capacity allocation process, and describing the process to demonstrate that its capacity allocation was consistent with its Commission-approved process and the Policy Statement. As described above, a developer has discretion as to the timing of its request for approval of the selection process. In this case, Western Spirit proposed a detailed process that it intends to use to screen and select customers and allocate capacity. We find that the proposed criteria will allow Western Spirit to distinguish among potential customers in a not unduly discriminatory or preferential manner, and we will allow Western Spirit to select and rank customers according to these criteria, subject to Western Spirit complying with the commitments made herein. As noted above, consistent with the requirements of the Policy Statement, Western Spirit has made a commitment to submit a subsequent compliance filing providing the details necessary to provide full transparency as to how Western Spirit applied its screening and ranking factors (and the weight applied to each factor) to demonstrate that Western Spirit has followed the process approved herein, and note that Western Spirit has committed to do so. Thus, we will direct Western Spirit to make a compliance filing disclosing the results of the capacity allocation process within 30 days after the close of the open solicitation process.³³ Further, we acknowledge Western Spirit's commitment to file an applicable OATT prior to commencement of service.³⁴

29. We also acknowledge Western Spirit's commitment, consistent with *Chinook*, that, once the Project has commenced operation, Western Spirit will maintain books and records for the Project 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 101 of the regulations, and have its books and records audited by an independent auditor.³⁵ These commitments will assist the Commission in carrying out its oversight role.

³³ The Policy Statement indicates how the Commission will treat that compliance filing. Policy Statement, 142 FERC ¶ 61,038 at P 31.

³⁴ Application at 24.

³⁵ See *Chinook*, 126 FERC ¶ 61,134 at P 62; *Champlain Hudson*, 132 FERC ¶ 61,006 at P 48; *Tres Amigas LLC*, 130 FERC ¶ 61,207, at P 90 (2010) (*Tres Amigas*).

3. Factor Three: Undue Preference and Affiliate Concerns

30. 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 expects an affirmative showing that the affiliate is not afforded an undue preference, and the developer bears 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 discriminatory or preferential.³⁶

31. Western Spirit states that, in the event an affiliate is allocated capacity, Western Spirit commits to reporting that information in its post-allocation filing, together with a demonstration that the assignment of capacity to the affiliate and the corresponding treatment of unaffiliated potential customers is just, reasonable, and not unduly preferential or discriminatory. Furthermore, to the extent an affiliate takes transmission service on the Project, Western Spirit commits to maintaining separate books and records for the affiliate and will abide by the Commission's Standards of Conduct requirements. Western Spirit also states that it will turn over operational control of the Project to an unaffiliated third-party transmission provider and that the purchase of transmission service after the initial capacity allocation process will be conducted using a Commission-approved OATT. Lastly, Western Spirit intends to file electric quarterly reports of transactions as required of transmission providers, and to commit to comply with the Commission's Standards of Conduct³⁷ and affiliate rules and filing requirements.³⁸

32. We acknowledge Western Spirit'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 making an affirmative showing in sufficient detail to demonstrate that no affiliate has been afforded undue preference. In addition, we acknowledge Western Spirit's commitment to turn over operational control of its facilities to an unaffiliated third-party transmission provider, 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

³⁶ Policy Statement, 142 FERC ¶ 61,038 at P 34.

³⁷ 18 C.F.R. Pt. 358 (2015).

³⁸ Application at 23-24.

addressing our affiliate preference concerns, subject to the Commission's approval of Western Spirit's subsequent compliance filing demonstrating that the assignment of capacity to any affiliate and the corresponding treatment of nonaffiliated potential customers are just, reasonable, and not unduly discriminatory or preferential.

4. 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. Merchant transmission projects, like cost-based transmission projects, are subject to mandatory reliability requirements.³⁹ Merchant transmission developers are required to comport with all applicable requirements of the North American Electric Reliability Corporation and any regional reliability council in which they are located.

34. Western Spirit notes that the Project is located in PNM's service territory, where there is no RTO or ISO. Western Spirit states that it will commit to comply with all applicable reliability requirements and to participate in the reliability planning process.⁴⁰

35. We acknowledge Western Spirit's commitment to comply with all applicable reliability requirements. Accordingly, we find that Western Spirit has met the regional reliability and operational efficiency requirement, subject to its participation in any necessary regional planning processes.

C. Waiver Requests

1. Western Spirit's Proposal

36. Western Spirit requests waiver of the following: (1) the full reporting requirements of Subparts B and C of Part 35 of the Commission's regulations,⁴¹ except for sections 35.12(a), 35.13(b), 35.15, and 35.16; (2) the Form No. 1, Annual Report of Major Electric Utilities, Licenses and Others (Form No. 1) filing requirement; and

³⁹ 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).

⁴⁰ Application at 25.

⁴¹ 18 C.F.R. Pt. 35 (2015).

(3) Part 141 relating to forms and reports, except sections 141.14 and 141.15.⁴² Western Spirit states that it will not sell transmission service at cost-based rates and does not have captive customers.⁴³ Western Spirit also states that the Commission has granted similar waiver requests to other merchant transmission owners seeking negotiated rate authority.⁴⁴ Western Spirit also requests waiver of any other part of the Commission's regulations as necessary to grant the authorizations requested therein.

2. Commission Determination

37. Because Western Spirit is proposing a merchant transmission project wherein it would bear all the financial risks associated with the Project, would not have any captive customers, and would be charging negotiated rates, the regulations requiring the filing of cost-based data are not applicable. Accordingly, consistent with our prior orders,⁴⁵ we will grant waiver of 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.

38. The Commission will also grant Western Spirit's request for waiver of the Form No. 1 filing requirement and Part 141 relating to forms and reports, except sections 141.14 and 141.15. The Commission has previously granted waiver of the Form No. 1 filing requirement to other merchant transmission owners.⁴⁶ We note, however, that Western Spirit must continue to maintain its books and records in accordance with the Commission's accounting and record retention policies.

⁴² Application at 26.

⁴³ *Id.*

⁴⁴ *Id.* (citing *Lake Erie CleanPower Connector*, 144 FERC ¶ 61,203 (2013); *Chinook*, 126 FERC ¶ 61,134 at PP 68, 69; *Grain Belt*, 147 FERC ¶ 61,098 at PP 34-35; and *Plains and Eastern*, 148 FERC ¶ 61,122 at PP 34-35).

⁴⁵ *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*).

⁴⁶ *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).

The Commission orders:

(A) Western Spirit is hereby granted authority to sell transmission rights on its Project at negotiated rates, subject to the Commission's acceptance of the compliance filing directed in Ordering Paragraph (B) below, as discussed in the body of this order.

(B) Western Spirit is hereby directed to make a compliance filing disclosing the results of the capacity allocation process within 30 days after the close of the open solicitation process, as discussed in the body of this order.

(C) Western Spirit's request 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, of the Form No. 1 filing requirement, and of Part 141 of the Commission's regulations, with the exception of sections 141.14 and 141.15, is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.