

157 FERC ¶ 61,090
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern Cross Transmission LLC

Docket No. ER16-2420-000

ORDER CONDITIONALLY AUTHORIZING PROPOSAL

(Issued November 7, 2016)

1. On August 12, 2016, Southern Cross Transmission LLC (Southern Cross) filed an application (Application) requesting authorization to modify its existing negotiated rate authority¹ to allow Southern Cross to allocate 100 percent of the transmission capacity for its high-voltage transmission project (Project) through an open solicitation process conducted in conformance with the reporting and other requirements of the Commission's Policy Statement.² In this order, the Commission authorizes Southern Cross to modify its existing authority to charge negotiated rates for transmission rights on the Project, subject to condition.

I. Background

2. Southern Cross is an affiliate of Pattern Energy Group LP (Pattern), which is an independent, fully-integrated energy company that develops, constructs, owns, and operates renewable energy projects and transmission assets throughout North America, Latin America, and Japan. Pattern was formed in June 2009 by Riverstone Holdings LLC. Pattern, through its affiliates, owns and is developing wind generation projects throughout the country, including within the Electric Reliability Council of Texas, Inc.

¹ See *Southern Cross Transmission LLC*, 137 FERC ¶ 61,207 (2011) (Negotiated Rate Order).

² *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 (2013) (Policy Statement).

(ERCOT). Pattern formed Pattern Power Marketing LLC (Pattern Power) to engage in the aggregation of wind power supplies within ERCOT for resale to load serving entities.

3. The Project is a 400-mile high voltage direct current (DC) transmission line providing incremental, bidirectional transmission capacity of up to 3,000 MW between City of Garland (Garland), Texas, at the Texas/Louisiana border (Western Point of Interconnection), and one or more substations serving load within the SERC Reliability Corporation (SERC) region in Mississippi and Alabama. Southern Cross states that the western converter station, which will convert alternating current (AC) to DC, will be located in western Louisiana adjacent to the Western Point of Interconnection and will interconnect to the Panola Substation, which will be owned and operated by Garland. The Project's eastern converter station will be constructed at a site in eastern Mississippi where the electricity will be converted from DC to AC power for delivery over one or more existing substations of load serving entities in the southeast United States.

4. Since the issuance of the Negotiated Rate Order, Southern Cross and its affiliate, Pattern Power, sought and obtained from the Commission an order under sections 210, 211, and 212 of the Federal Power Act (FPA)³ directing Garland to interconnect with the Project and directing Oncor Electric Delivery Company LLC and CenterPoint Energy Houston Electric, LLC, to provide transmission service for power flowing into and out of ERCOT over the Project.⁴

5. Southern Cross now requests that the Commission approve a departure from Southern Cross's existing negotiated rate authority to allow the company to allocate 100 percent of the Project's transmission capacity through bilateral negotiations undertaken in conformance with the reporting and other requirements of the Policy Statement.⁵ In the Negotiated Rate Order, the Commission authorized Southern Cross to seek to allocate up to 75 percent of the Project's final capacity through anchor tenant agreements, with the remaining capacity being allocated through an open season auction.⁶

6. Since the issuance of the Negotiated Rate Order, Southern Cross states that it has engaged in extensive marketing to attract anchor tenants. According to Southern Cross, no credit-worthy entity has been willing to enter into a long-term capacity purchase that could provide all or a significant level of credit support needed for the financing of the

³ 16 U.S.C. §§ 824i, j, k (2012).

⁴ *Southern Cross Transmission LLC*, 147 FERC ¶ 61,113 (2014).

⁵ Southern Cross Application at 5.

⁶ Negotiated Rate Order, 137 FERC ¶ 61,207 at P 28.

Project.⁷ Southern Cross states that there are several reasons that have contributed to this situation. First, Southern Cross believes there is a disconnect between the timing of the Project's development and the development of wind generation that would utilize the Project. Second, the Negotiated Rate Order required Southern Cross to offer the same rates, terms, and conditions in the anchor tenant agreements to participants in the open season auction who are willing to purchase capacity for the same term as the anchor tenant customers; Southern Cross asserts that this creates a disincentive for potential purchasers to commit during anchor tenant negotiations. Finally, Southern Cross contends that withholding 25 percent of final capacity for an open season brings uncertainty to the Project's schedule, which does not meet the needs of power purchasers.

7. Southern Cross asserts that it demonstrated in its September 2011 petition requesting negotiated rate authority (September 2011 Petition) that Southern Cross met the Commission's criteria for negotiated rate authority under the standards established by the Commission in *Chinook Power Transmission, LLC*.⁸ Southern Cross states that the Commission accepted the representations in the September 2011 Petition when it issued the Negotiated Rate Order. Southern Cross represents that the facts in its September 2011 Petition remain true and accurate today. For example, Southern Cross explains that it remains true that neither Southern Cross nor any of its affiliates owns or operates transmission facilities within ERCOT or SERC and, therefore Southern Cross does not have the ability to erect barriers to entry or exert market power.⁹

8. Southern Cross reaffirms the commitment it made in the September 2011 Petition that it will prepare and file with the Commission, no later than one year prior to the Project's commercial operation date, an open access transmission tariff (OATT) consistent with the *pro forma* OATT requirements of Order No. 890¹⁰ or with deviations from the *pro forma* OATT that can be explained and supported by Southern Cross and accepted by the Commission.¹¹

⁷ *Id.* at 3.

⁸ *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134 (2008) (*Chinook*).

⁹ Southern Cross Application at 5.

¹⁰ *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, at P 814 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on reh'g*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

¹¹ Southern Cross Application at 5-6.

9. Southern Cross represents that it will comply with all applicable reporting and other requirements for an open solicitation process, as described in the Policy Statement. Southern Cross states that it has suspended its proactive capacity marketing efforts, and it will provide the marketplace with broad notice of the Project and the open solicitation process before initiating bilateral negotiations with potential capacity purchasers. Southern Cross explains that the notice will be updated to notify customers of material changes to the Project and/or the open solicitation process.¹² Southern Cross believes that marketing of the Project through the open solicitation process needs to be initiated no later than mid-October, and therefore asks for expedited consideration.¹³

10. Southern Cross states that it will retain an independent evaluator to assist in the development of selection criteria and to ensure that the open solicitation process is conducted in a transparent and non-discriminatory manner. Southern Cross explains that, after the bilateral negotiations are completed, the evaluator will prepare a post-selection report on the open solicitation process, which will be submitted by Southern Cross for Commission approval.¹⁴

II. Notice and Responsive Pleadings

11. Notice of Southern Cross's Application was published in the *Federal Register*, 81 Fed. Reg. 56,630 (2016), with interventions and protests due on or before August 26, 2016. None was filed.

III. Discussion

A. Negotiated Rate Authority

12. As discussed above, in the Negotiated Rate Order, the Commission granted Southern Cross's request to charge negotiated rates for the Project based on the proposal presented at that time. Southern Cross now seeks to modify its existing negotiated rate authority to allow it to allocate 100 percent of the Project's transmission capacity through bilateral negotiations conducted through an open solicitation process that conforms with the reporting and other requirements of the Policy Statement. We will conditionally grant Southern Cross's request to modify its negotiated rate authority.

¹² *Id.* at 6.

¹³ *Id.* at 8.

¹⁴ *Id.* at 6.

13. In evaluating negotiated rate applications, the Commission's analysis has focused 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, including affiliate preference; and (4) regional reliability and operational efficiency requirements.¹⁵ 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.

1. 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.¹⁶ In determining whether negotiated rates will be just and reasonable, the Commission looks to whether the merchant transmission owner has assumed the full market risk for the cost of constructing its proposed project and is not building within the footprint of the merchant transmission owner's (or an affiliate's) traditionally regulated system. In such a case, there are no captive customers who would be required to pay the costs of the project. The Commission will also consider whether the merchant transmission owner or an affiliate already owns transmission facilities in the 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.¹⁷

a. Southern Cross's Proposal

15. Southern Cross represents that the facts in its September 2011 Petition remain true and accurate today.¹⁸ In that petition, Southern Cross explained that it: (1) is a new market entrant; (2) affirmed that it will assume full market risk of the Project; and (3) will not have captive customers.¹⁹ In its current Application, Southern Cross states that it

¹⁵ *Chinook*, 126 FERC ¶ 61,134 at P 37.

¹⁶ *Id.* See also *Champlain Hudson Power Express, Inc.*, 132 FERC ¶ 61,006, at P 17 (2010).

¹⁷ *Chinook*, 126 FERC ¶ 61,134 at P 38.

¹⁸ Southern Cross Application at 5.

¹⁹ September 2011 Petition at 11-12.

remains true today that neither Southern Cross nor any of its affiliates owns or operates any transmission facilities within either ERCOT or SERC, the two regions served by the Project, and thus Southern Cross has no ability to erect barriers to entry or exercise market power.²⁰ Southern Cross also reaffirms the commitment it made in the September 2011 Petition that it will operate the Project pursuant to an OATT and file the OATT with the Commission no later than one year prior to the commercial operation of the Project.²¹ In the September 2011 Petition, Southern Cross asserted that use of an OATT will prevent it from exercising market power or erecting barriers to entry in the region where the Project will operate.²²

16. In the September 2011 Petition, Southern Cross provided additional assurances as to why the rates charged to transmission customers will be just and reasonable. First, Southern Cross observed that incumbent transmission owners within the SERC region have an obligation to expand their transmission capacity, upon request, at cost-based rates. Thus, Southern Cross contended that no entity will purchase transmission service from Southern Cross unless it is cost effective to do so when compared to the cost of expanding capacity by incumbent transmission owners. In addition, Southern Cross stated that the Commission has recognized that negotiated rates for service over merchant transmission lines are effectively capped at the differential in power prices between markets at either end of the line.²³ Finally, Southern Cross asserted that the transmission customers that are likely to subscribe to the Project are sophisticated market participants that would only secure transmission service at competitive rates.²⁴

b. Commission Determination

17. Based upon the information provided in the Application, we conclude that, Southern Cross's request for authority to allocate 100 percent of the Project's transmission capacity through an open solicitation process conducted in conformance with the requirements of the Policy Statement meets the first of the *Chinook* factors. Southern Cross assumes full market risk for the Project and has no captive customers. Additionally, because neither Southern Cross nor any of its affiliates owns any

²⁰ Southern Cross Application at 5.

²¹ *Id.*

²² September 2011 Petition at 13.

²³ *Id.* (citing *Hudson Transmission Partners, LLC*, 135 FERC ¶ 61,104, at P 20 (2011); *Tres Amigas LLC*, 130 FERC ¶ 61,207, at P 64 (2010)).

²⁴ *Id.*

transmission facilities within ERCOT or SERC, Southern Cross has no ability to erect barriers to entry or exercise market power in the relevant markets. Moreover, no entity is required to purchase transmission service from Southern Cross, and customers will do so only if it is cost-effective. Accordingly, we find that Southern Cross's request to allocate 100 percent of the Project's transmission capacity through an open solicitation process conducted in conformance with the requirements of the Policy Statement, satisfies the first criterion of the Commission's four-factor analysis.

2. **Factor Two: Undue Discrimination**

18. As explained in *Chinook*, in order to prevent undue discrimination when granting merchant transmission owners negotiated rate authority, the Commission has considered: (1) the terms and conditions of a merchant developer's open season; and (2) its tariff commitments (or in the regional transmission operator (RTO)/ independent system operator (ISO)) context, its commitment to turn operational control over to the RTO or ISO.²⁵ The Policy Statement, however, provides an alternative to conducting a formal 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.²⁶ 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.²⁷

19. In the Policy Statement, the Commission stated 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.²⁸ 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).²⁹ The developer should also specify in the notice the

²⁵ *Chinook*, 126 FERC ¶ 61,134 at P 40.

²⁶ Policy Statement, 142 FERC ¶ 61,038 at PP 15, 23.

²⁷ *Id.* P 16.

²⁸ *Id.* P 23.

²⁹ *Id.* P 20.

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.³⁰

20. Additionally, in the Policy Statement, the Commission stated that merchant developers must disclose the results of their capacity allocation process, though this disclosure would be part of the Commission's approval of the capacity allocation process and thus noticed and acted upon under section 205 of the FPA.³¹ 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.³²

21. 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.³³ 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.

³⁰ *Id.* PP 24-27.

³¹ 16 U.S.C. § 824d (2012).

³² Policy Statement, 142 FERC ¶ 61,038 at P 30.

³³ *Id.* P 32.

a. **Southern Cross's Proposal**

22. Southern Cross commits to conduct an open solicitation process consistent with the requirements of the Policy Statement.³⁴ Southern Cross states that, prior to engaging in bilateral negotiations with potential capacity purchasers, it will provide “broad notice” of the Project and the open solicitation process to ensure that all potential and interested customers are informed. Southern Cross states that notice of the open solicitation will include all of the information identified in Paragraphs 24 and 25 of the Policy Statement and will be updated over time as necessary to notify potential customers of material changes to the Project and/or the open solicitation process.³⁵

23. Southern Cross further commits to retain an independent evaluator to assist in the development of selection criteria and to ensure that the open solicitation process is conducted in a transparent and non-discriminatory manner.³⁶ Southern Cross states that, following the conclusion of bilateral negotiations, the independent evaluator will be charged with preparing the post-selection report on the open solicitation process that will be submitted by Southern Cross under section 205 for Commission approval. In that filing, Southern Cross states that it will seek Commission approval of the specifics of the capacity allocation process, as required by Paragraph 31 of the Policy Statement.³⁷

24. Finally, Southern Cross reasserts its commitment made in the September 2011 Petition to prepare and file an OATT with the Commission, no later than one year prior to the Project's commercial operation date, that is consistent with the *pro forma* OATT requirements of Order No. 890,³⁸ or with deviations from the *pro forma* OATT that can be explained and supported by Southern Cross and accepted by the Commission.³⁹

³⁴ Southern Cross Application at 6.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, at P 814, FERC Stats & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on reh'g*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

³⁹ Southern Cross Application at 5-6.

b. Commission Determination

25. We acknowledge Southern Cross's commitment to conduct an open solicitation and capacity allocation process consistent with the requirements of the Policy Statement and will reserve judgment on whether that open solicitation and capacity allocation process was not unduly discriminatory pending Southern Cross making a compliance filing with the Commission within 30 days of the close of the open solicitation process disclosing the results of its capacity allocation process and demonstrating that its capacity allocation was consistent with the Policy Statement and the Commission's open access policies.⁴⁰ We note that Southern Cross commits to allocating 100 percent of the Project's capacity through a transparent open solicitation process consistent with the requirements of the Policy Statement. Southern Cross also commits to retaining an independent evaluator to assist in the development of selection criteria and to ensure that the open solicitation process is conducted in the transparent and non-discriminatory manner. Southern Cross further commits to file with the Commission no later than one year prior to the Project's commercial operation date an OATT consistent with the *pro forma* OATT requirements of Order No. 890 or with deviations from the *pro forma* OATT that can be explained and supported by Southern Cross and accepted by the Commission.

26. As the Commission stated in the Negotiated Rate Order, once the Project has commenced operation, consistent with *Chinook*, Southern Cross must ensure that: (1) it maintains books and records for the Project that comply with the Uniform System of Accounts in Part 101 of the Commission's regulations,⁴¹ subject to examination as required in Part 41 of the regulations;⁴² (2) it files financial statements and reports in accordance with Part 141.14 and 141.15 of the Commission's regulations;⁴³ and (3) its books and records are audited by an independent auditor.⁴⁴ These commitments will assist the Commission in carrying out its oversight role.

⁴⁰ The Policy Statement indicates how the Commission will treat that compliance filing. Policy Statement, 142 FERC ¶ 61,038 at P 31.

⁴¹ 18 C.F.R. pt. 101 (2016).

⁴² *Id.* at Part 41.

⁴³ *Id.* at Part 141.

⁴⁴ *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.

27. Consistent with its commitment, Southern Cross must file an OATT that adheres to the *pro forma* OATT in Order No. 890 no later than one year prior to the commencement of service. Any deviations from the *pro forma* OATT must be supported and will be evaluated by the Commission when they are submitted so that the Commission can be sure Southern Cross will provide open and non-discriminatory service on its Project.

3. Factor Three: Undue Preference and Affiliate Concerns

28. In the context of merchant transmission, the Commission's 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, 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.⁴⁵

a. Southern Cross's Proposal

29. Southern Cross states that, as it discussed in its September 2011 Petition, if the ultimate power purchaser prefers to purchase wind energy delivered at or near the Project's eastern converter station, Pattern Power, may participate in the open solicitation process seeking a capacity purchase.⁴⁶ Southern Cross explains that it is aware of the "high burden" placed by the Commission in the Policy Statement on justifying that the sale of capacity to an affiliate is just, reasonable, and not unduly preferential or discriminatory. Southern Cross asserts that, working with the independent evaluator, it will be able to demonstrate in its post-selection report to the Commission that all potential capacity purchasers were evaluated under the selection criteria that were fairly and transparently applied to all submitted proposals for capacity purchases and that Southern Cross can establish that any affiliated sale of capacity will be shown to have met the high standard imposed by the Commission in the Policy Statement.⁴⁷

⁴⁵ Policy Statement, 142 FERC ¶ 61,038 at P 34.

⁴⁶ Southern Cross Application at 7.

⁴⁷ *Id.* at 7.

b. Commission Determination

30. The Commission acknowledges Southern Cross's commitment to engage in an open solicitation process and make a compliance 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. We note that Southern Cross has committed to comply with all applicable affiliate rules and the Standards of Conduct to the extent that any affiliate contracts for transmission service over the Project,⁴⁸ and intends to have an independent evaluator overseeing the open solicitation process. In addition, Southern Cross has committed to file electric quarterly reports of its transactions as required of transmission providers.⁴⁹ Moreover, the commitments made by Southern Cross regarding the open solicitation process and reporting requirements will ensure that all transactions are transparent. We accept these commitments as addressing our affiliate preference concerns, subject to our approval of Southern Cross's 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

31. In order to ensure regional reliability and operational efficiency, the Commission expects that any merchant transmission projects connected to an RTO or an ISO turn over operational control to the RTO/ISO. Merchant transmission projects, like cost-based transmission projects, are subject to mandatory reliability requirements.⁵⁰ 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. Southern Cross' Proposal

32. In the September 2011 Petition, Southern Cross stated that it will comply with applicable reliability requirements and procedures of NERC and SERC. Southern Cross

⁴⁸ September 2011 Petition at 17.

⁴⁹ *See id.*; 18 C.F.R. § 35.10(b) (2016). *See also* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 817; Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 394.

⁵⁰ *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).

also stated that it had submitted the Project for evaluation in conjunction with the ERCOT transmission planning process. In addition, Southern Cross reported that it had formally proposed the Project to the transmission planning groups of the Tennessee Valley Authority, the Southern Company, and Entergy, and those groups were working cooperatively with Southern Cross to undertake the necessary reliability studies within the SERC region.⁵¹

b. Commission Determination

33. We acknowledge Southern Cross's commitment to file an OATT for service on the Project and comply with applicable NERC and SERC reliability requirements. We also acknowledge Southern Cross's representations that it has entered into the ERCOT transmission planning process and is working with entities in the SERC region to do the appropriate reliability planning. Accordingly, we find that, Southern Cross's proposal meets the regional reliability and operational efficiency requirements, subject to Southern Cross's continuing participation in the necessary regional planning processes.

The Commission orders:

(A) Southern Cross's request to modify its authority to sell transmission rights on its proposed merchant transmission Project at negotiated rates is hereby granted, subject to condition, as discussed in the body of this order.

(B) Southern Cross is hereby directed to file with the Commission a compliance filing within 30 days after the close of the open solicitation process, as discussed in the body of this order.

(C) Southern Cross is hereby directed to file its OATT no later than one year prior to commencement of service on the Project, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁵¹ September 2011 Petition at 17-18.