

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Sea Breeze Pacific Juan de Fuca Cable, LP

Docket No. ER05-1228-000
ER05-1228-001

ORDER AUTHORIZING PROPOSAL

(September 15, 2005)

1. In this order, the Commission, acting pursuant to section 205 of the Federal Power Act (FPA)¹ as well as pursuant to authority delegated to the Commission by the Secretary of the Department of Energy (DOE) pursuant to DOE's authority under section 202(e) of the FPA,² grants Sea Breeze Pacific Juan de Fuca Cable, LP's (Sea Breeze) application for authority to sell transmission rights at negotiated rates.³

¹ 16 U.S.C. § 824d (2000).

² 16 U.S.C. § 824a(e) (2000).

³ Secretary of Energy's Delegation Order No. 00-004.00, 67 Fed. Reg. 8946 (2002). Pursuant to section 1.3 of this order, the Secretary delegated to the Commission authority to:

Carry out such functions as are necessary to implement and enforce the Secretary's policy requiring holders of Presidential permits authorizing the construction, operation, maintenance, or connection of facilities for the transmission of electric energy between the United States and foreign countries to provide non-discriminatory open access transmission services. In exercising this authority, the Commission is specifically authorized to utilize the authority of the Secretary under Executive Order No. 10485, dated September 3, 1953, as amended by Executive Order No. 12038, dated February 3, 1978, and section 202(e) of the [FPA] and such other sections of the FPA vested in the Secretary as may be relevant, to regulate access to, and the rates, terms, and conditions for, transmission services over permitted international electric transmission facilities to the extent the Commission finds it necessary and appropriate to the public interest. This authority is delegated to the Commission for the sole purpose of authorizing the Commission to take actions necessary to implement and enforce non-discriminatory open access transmission service over the United States['] portion of those international electric transmission lines required by the Secretary to provide such service. Nothing in

(continued...)

Background

2. On July 20, 2005, Sea Breeze filed an application for authority to sell transmission rights at negotiated rates. Sea Breeze proposes to develop, finance, and construct a 22-mile-long 540 MW, high voltage, direct current transmission line and converter stations that would run underneath the Strait of Juan de Fuca between Washington State and British Columbia, Canada (Project). The Project will connect the substation of Bonneville Power Administration (BPA) in Port Angeles, Washington to the substation in Victoria, British Columbia owned by British Columbia Hydro and Power Authority (BC Hydro) and operated by British Columbia Transmission Corporation (BCTC).

3. Sea Breeze states that the Project is designed and sited to improve electric reliability in both the Pacific Northwest and British Columbia, increase inter-region import/export limits, provide more competition and options to the marketplace, allow markets on both sides of the international border to have efficient and economic access to existing and new generation sources, and promote the optimal allocation of generation resources. Sea Breeze also states that the Project may allow significant deferral of transmission capital investment that BPA and BCTC are planning.⁴ Sea Breeze is proposing to hold an open season to accept bids for transmission rights in the fall of 2005, while construction of the Project will begin in the summer of 2006 and commercial operation in December 2007.

this delegation shall allow the Commission to revoke, amend, or otherwise modify Presidential permits or electricity export authorizations issued by the Secretary.

⁴ For example, Sea Breeze states that the Project may defer or eliminate the need for BPA's construction of an 84-mile 230 kV line up the Olympic Peninsula (plus associated series compensation and StatCom facilities) to serve load on the Peninsula; may defer or eliminate the need for BC Hydro to enter into a long-term capacity and gas tolling contract with a 250 MW CCGT on Vancouver Island; and may defer or eliminate the need for BCTC to replace existing derated (to non-firm) HVDC circuits to Vancouver Island. In addition, Sea Breeze states that the Project may bring N-2 reliability to the largest load pocket in BPA not currently meeting that standard, and will provide a parallel path for the Columbia Basin Treaty return obligations so that curtailments currently expected to be caused by such treaty obligations in the Puget Sound area can be alleviated. Moreover, Sea Breeze states that the Project will likely provide dynamic voltage support and transient stability that could increase flow gate capabilities of existing transmission along the I-5 corridor.

4. On August 10, 2005, Sea Breeze filed a clarification to its application. It states that in its application it made certain observations with respect to constraints on existing transmission providers in the area to develop an HVDC Light transmission line as proposed by Sea Breeze. BCTC, one of the transmission providers referenced, informed Sea Breeze that it does not consider the observations about the constraints on its building of transmission facilities to fairly represent its position and is concerned that the statements will leave an inaccurate impression.

5. Sea Breeze requests clarification of the last paragraph on page 6 of its application as follows:

BCTC does not consider some of the identified institutional constraints to building new inter-country transmission facilities as applicable to it. In addition, BCTC is officially neutral with respect to the Juan de Fuca project at this time, and the Project has been treated in the same manner as a standard large generation interconnection request.

Notices and Responsive Pleadings

6. Notice of Sea Breeze's filing was published in the *Federal Register*, 70 Fed. Reg. 44,094 (2005), with interventions and protests due on or before August 10, 2005. BPA filed a timely motion to intervene.

7. Notice of Sea Breeze's clarification was published in the *Federal Register*, 70 Fed. Reg. 49,271 (2005), with interventions and protests due on or before August 22, 2005. On August 19, 2005, BPA filed a motion for leave to file comments and comments regarding Sea Breeze's proposed application and clarification.

8. In its comments, BPA expresses concern about Sea Breeze's representations of BPA's transmission system. As a neutral transmission provider, BPA states that it neither supports nor protests the development of this merchant transmission line to be constructed by Sea Breeze. BPA contends that Sea Breeze's application misrepresents, among other things, that: 1) BPA would be a primary beneficiary of the Project; 2) the Project will provide "likely benefits" to BPA's transmission system and "potential" reliability benefits to the region; and 3) the Project would provide BPA a parallel path for the return of power to Canada under the Columbia Basin Treaty. BPA states that the Treaty and its implementing agreements require specific delivery points for the return of power to Canada, and the Project would not meet these requirements. BPA also clarifies that it is neither studying the impact of the Project on its system nor conducting the National Environmental Policy Act analysis that would be associated with any future transmission service request.

9. On August 24, 2005, Sea Breeze submitted an answer to BPA's comments. Sea Breeze states that all information disputed by BPA was provided as background information to demonstrate why Sea Breeze is willing to assume the economic risks inherent in the Project. Sea Breeze contends that the Project will proceed only if the benefits that Sea Breeze believes to exist are real. Sea Breeze indicates that it filed a draft copy of the application to BPA prior to its filing for comment. Sea Breeze contends that it would have willingly edited any statements BPA found objectionable if it had received feedback from BPA.

Discussion

A. Procedural

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motion to intervene of BPA serves to make it a party to this proceeding.

11. We grant BPA's motion for leave to file comments regarding Sea Breeze's application and amendment because it provides information that has been helpful in the Commission's decision-making process.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Sea Breeze's answer because it has provided information that assisted us in our decision-making process.

B. Commission Review of the Project

13. Sea Breeze states that the Project transmission line will connect at one end to a point within the United States and at the other end to a point within Canada. It asserts that because transmission over the Project is not "within the United States," it is not in "interstate commerce" as defined in the FPA, and is not generally subject to the regulatory provisions under Part II of the FPA. Sea Breeze states that the Commission has held that Congress intended that service on international transmission lines is to be governed pursuant to sections 202(e) and 202(f) of the FPA, which specifically address international transmission lines, and not pursuant to sections 201, 205, or 206.⁵ Sea Breeze acknowledges that while DOE, not this Commission, administers sections 202(e)

⁵ Sea Breeze cites to *Enron Power Marketing, Inc. v. El Paso Electric Co.*, 77 FERC ¶ 61,013 at 61,049 (1996), *order on reh'g*, 83 FERC ¶ 61,213 (1998), as support for this proposition.

and (f) of the FPA, DOE has delegated to the Commission certain authorities it has with respect to issuing Presidential Permits for international transmission projects. Sea Breeze indicates that this delegation appears to grant the Commission certain authority, including authority under section 202(e), to impose open access transmission conditions on the Presidential Permit that will be issued for the construction, operation, and maintenance of the Project. Sea Breeze adds that DOE has stated its intent to condition any Presidential Permit issued for the Project upon compliance with open access principles that DOE has delegated to the Commission to administer.

14. In order to alleviate any concerns that potential investors and customers of the project may have about the regulatory status of the project, Sea Breeze has committed itself to satisfying the same criteria that the Commission has previously used in approving negotiated rates for interstate transmission service by public utilities. Sea Breeze states that the submission of its application should not be construed as an admission that Sea Breeze would be a public utility under Part II of the FPA upon operation of the Project. Sea Breeze claims that transmission over the Project would not be in interstate commerce pursuant to FPA section 201(c) and therefore Sea Breeze is not a public utility.

15. As an initial matter, we disagree with Sea Breeze's assumption that it would not be a public utility under Part II of the FPA upon operation of the Project. Section 202(f) of the FPA states:

The ownership or operation of facilities for the transmission or sale at wholesale of electric energy which is (a) generated within a State and transmitted from that State across an international boundary and not thereafter transmitted into any other State, or (b) generated in a foreign country and transmitted across an international boundary into a State *and not thereafter transmitted into any other State*, shall not make a person a public utility subject to regulation as such under other provisions of this part. (Emphasis added).

Where, as here, electric energy to be transmitted by the Project may be "generated in a foreign country and transmitted across an international boundary into a State", but would thereafter be transmitted into another State, the ownership or operation of the transmission facilities would not fall within the plain language of section 202(f). Accordingly, Sea Breeze would not qualify, under section 202(f), for exemption from regulation as a public utility. Because we find that the ownership or operation of the Project would make Sea Breeze a public utility, subject to regulation under other provisions of Part II of the FPA, we will review this application pursuant to FPA section 205. However, because aspects of the Project also entail matters that are under the authority delegated to the Commission by the Secretary of Energy to take actions necessary to implement and enforce non-discriminatory open access transmission service

over the U.S. portion of international electric transmission lines required by the Secretary, under FPA section 202(e), to provide such service, our review of Sea Breeze's application is also undertaken pursuant to FPA section 202(e). In this regard, our action in this order, pursuant to section 202(e), is subject to the grant by the Secretary of Energy of Sea Breeze's application for a Presidential Permit for the Project.

16. The Commission has developed 10 criteria to evaluate proposals to charge negotiated rates for transmission rights over new transmission facilities. These 10 criteria include: (1) that the merchant transmission facility must assume full market risk; (2) that the service should be provided under the open access transmission tariff (OATT) of the Independent System Operator (ISO) or Regional Transmission Organization (RTO) that operates the merchant transmission facility and that operational control be given to that ISO or RTO; (3) that the merchant transmission facility should create tradable firm secondary transmission rights; (4) that an open season process should be employed to initially allocate transmission rights; (5) that the results of the open season should be posted on the Open Access Same-Time Information System (OASIS) and filed in a report to the Commission; (6) that affiliate concerns should be adequately addressed; (7) that the merchant transmission facility not preclude access to essential facilities by competitors; (8) that the merchant transmission facilities should be subject to market monitoring for market power abuse; (9) that physical energy flows on merchant transmission facilities should be coordinated with, and subject to, reliability requirements of the relevant ISO or RTO; and (10) that merchant transmission facilities should not impair pre-existing property rights to use the transmission grids of inter-connected RTOs or utilities.⁶

17. Sea Breeze's application enumerates how the Project meets the 10 criteria established to evaluate merchant transmission projects. Sea Breeze states that the Project is in some ways factually different from the cases the Commission has previously addressed and may require different consideration under some of the criteria established in the previous orders. We will address each of the criteria below. As discussed below, we analyze the Project on the basis of these criteria, taking into account the circumstances in which the facts of this case are different from those of previous merchant transmission proposals. Specifically, while we find that Sea Breeze's application meets the market monitoring and operational control criteria, we also find that under the specific circumstances of this case it does not need to do so. The Commission is open to reconsidering the remaining criteria for these kinds of projects in a future proceeding.

⁶ See *Northeast Utilities Service Co.*, 97 FERC ¶ 61,026 (2001).

1. Assumption of Market Risk

18. The first criterion is that the merchant transmission facility should assume full market risk. In its application, Sea Breeze notes that it will assume full market and financial risk for the Project. In addition, Sea Breeze indicates that it has no existing customers that will be asked to assume any risks of failure or underperformance. It claims the success of the Project is dependent upon Sea Breeze's ability to sell transmission capacity to third parties at rates that will allow the Project to be operated at a profit. We find that Sea Breeze's commitment to assume all the financial risk for the Project, as well as the assurance that the cost of the Project will be recovered only from those buying capacity rights, adequately satisfies this criterion.

2. Open-Access Transmission Tariff

19. The second criterion is that service should be provided under the OATT of the ISO or RTO that operates the merchant transmission facilities, and that control of the facilities should be given to that ISO or RTO. In its application, Sea Breeze states that it does not intend to assume operational authority over the Project once it is placed in service. Sea Breeze proposes to turn over operational control of the Project to an independent grid operator that has an OATT in place. However, Sea Breeze notes that the Commission will have to consider the unique nature of this Project because the newly constructed transmission line will interconnect two entities (BPA and BCTC) that are not subject to the Commission's jurisdiction under FPA sections 205 and 206.⁷ Nevertheless, in order to comply with the Commission's criterion of nondiscriminatory access to transmission, Sea Breeze states that it hopes to transfer operational authority of the Project to BPA, BCTC, or GridWest, if that organization is operational at the time of commercial operation of the Project.⁸ Sea Breeze plans to negotiate with one or all of these grid

⁷ Sea Breeze notes that BPA, as an agency of the U.S. government, is not a public utility for purposes of Part II of the FPA. However, BPA does have an approved reciprocity OATT on file at the Commission pursuant to the safe harbor provisions of Order No. 888. Sea Breeze further states that the British Columbia Utilities Commission, on June 23, 2005, approved a replacement OATT for BCTC that was modeled after the Order No. 888 OATT.

⁸ GridWest is not intended to satisfy criteria established by the Commission for recognition as a RTO, but rather to function as an independent transmission provider that provides services under a tariff that complies with the Commission's requirements established under Order No. 888. The area that GridWest would serve includes the states of Idaho, Oregon, Washington, Montana, Utah, Wyoming, and Nevada (and a small portion of northern California) and the Canadian provinces of British Columbia and potentially Alberta. *See Bonneville Power Administration*, 112 FERC ¶ 61,012 (2005).

entities, as appropriate, in an attempt to place the Project under the operational control of a grid operator with an OATT, but it states that it cannot currently predict which entity will be available.

20. The Commission, in previous orders, has required that service be provided under the OATT of an ISO or RTO that operates the merchant transmission facilities, and that control of the facilities should be given to that ISO or RTO. We note that this application is unique for the following reasons. First, there is no ISO or RTO currently functioning in this region. Second, the construction of this facility will interconnect two entities that are not subject to the Commission's jurisdiction under sections 205 and 206 of the FPA.⁹

21. Merchant transmission projects can play a useful role in expanding competitive generation alternatives for customers and meeting reliability needs. In evaluating merchant transmission projects, the Commission has applied standard criteria for approving new transmission infrastructure. These criteria have been applied to merchant transmission projects on a case-by-case basis. Specifically, the Commission authorized the transfer of authority to an ISO or RTO in previous orders based on the fact that the project was located in a region with functional ISOs and RTOs. The instant proposal does not present the Commission with similar circumstances.

22. As noted above, however, Sea Breeze indicates that it plans to negotiate with BPA, BCTC, or GridWest as appropriate in an attempt to place the Project under the operational control of a grid operator with an OATT. Sea Breeze states that it is committed to the principle of non-discriminatory access to its proposed transmission line. On this basis, we acknowledge Sea Breeze's proposal to transfer operational control to one of these three entities, but, as a merchant transmission line, we will not require it to do so. If Sea Breeze retains operational control, it will be required to file its own open access transmission tariff (OATT) pursuant to Order No. 888.

3. Secondary Transmission Rights

23. The third criterion is that the merchant transmission facility should create tradable firm secondary transmission rights and these rights should be posted on OASIS. Sea Breeze indicates that it intends for the Project's secondary transmission rights to be tradable. Currently, Sea Breeze does not know which entity will have operational control of the Project. However, Sea Breeze states that it will arrange with whoever is ultimately responsible for operational control to publicly post any secondary transmission rights.

⁹ We note that the Energy Policy Act of 2005 gives the Commission expanded authority over non-public utilities such as BPA. *See* section 1232 of the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005).

Given the unique circumstances of the instant proposal, we find that Sea Breeze's commitment to create tradable firm secondary transmission rights and to make arrangements with whoever ultimately has operational control for these secondary transmission rights to be publicly posted meets this criterion.

4. Open Season

24. In order to ensure that transmission rights are allocated in a non-discriminatory, fair, and transparent basis, the Commission requires an open-season process to initially allocate transmission rights. Sea Breeze proposes to conduct an initial open season during the fall of 2005 for the purpose of selling long-term point-to-point transmission service (or scheduling) rights and potentially other ancillary products¹⁰ that derive from the Project. Sea Breeze states that bidders will be permitted to submit bids for transmission rights up to the full capacity of the cable. Sea Breeze will make public announcements in advance of holding the open season.¹¹

25. Sea Breeze will require those who bid for transmission rights and other ancillary services to demonstrate their creditworthiness to perform under a long-term obligation. Sea Breeze proposes that bidders adhere to a minimum contract length and price because the contracts are critical to raising the necessary financing to support the development of the project. Sea Breeze states that bids will be evaluated, and contracts awarded, based on the greatest total net present value to Sea Breeze.

26. Sea Breeze indicates that it is unlikely that an open season will result in bids that will reflect full compensation for the benefits created by the project. Sea Breeze states that the two largest potential beneficiaries, BPA and BCTC, are likely not permitted by their enabling regulations to bid into an open season to purchase transmission rights, and even if they were, it is questionable whether such bids would reflect the totality of the reliability and other system benefits they would receive by virtue of the line being in service. Sea Breeze contends that it will most likely be required to conduct individual negotiations with BPA and BCTC in order to receive compensation for many of the project benefits. Sea Breeze requests that the Commission grant it flexibility, which it

¹⁰ *E.g.*, VARS and black start.

¹¹ Sea Breeze also proposes to establish a website to provide bidders with the timing and other pertinent details regarding the implementation of its open season process.

says the Commission has previously granted in similar circumstances,¹² to conduct these individual negotiations and receive whatever compensation can be negotiated from BPA and BCTC for project benefits.

27. The Commission finds that Sea Breeze's open season proposal is transparent, non-discriminatory, and fair. Sea Breeze adequately specifies the rules for the open season, including the specific products available for bidding and threshold criteria to be met for a bidder's proposal to be considered by Sea Breeze during the open season. Sea Breeze will conduct negotiations with the selected bidders for the purpose of resolving any issues and executing binding contracts. Once all contracts have been executed related to the open season, Sea Breeze will identify the names of the winning bidders and the general terms of the contract, and report the results of the open season to the Commission. Thus, the open season criterion is satisfied.

5. Report on Open Season

28. The fifth criterion is that the results of the open season be posted on OASIS and filed in a report to the Commission. In its application, Sea Breeze commits to file the results of the open season with the Commission after this process has concluded. While Sea Breeze does not operate an OASIS at this time and does not know when a responsible operating entity with an OASIS will be designated, Sea Breeze plans to post the results of its open season on its website. Given the unique facts of this case, we find that Sea Breeze's proposal satisfies the fifth criterion. We direct Sea Breeze to file its report of the open season results with the Commission within 30 days of the close of the open season.

6. Affiliate Concerns

29. The sixth criterion is that affiliate concerns be adequately addressed. Sea Breeze's proposal satisfies this concern. Sea Breeze is a limited partnership established for the purpose of developing and financing the Project.¹³ Sea Breeze states that it does not anticipate that its affiliates will participate in the open season for primary transmission rights. However, if an affiliate does decide to participate, Sea Breeze will adopt

¹² See *Neptune Regional Transmission Syst., LLC*, 96 FERC ¶ 61,147 at 61,634, *order on reh'g*, 96 FERC ¶ 61,326 (2001).

¹³ The two partners are Sea Breeze Victoria Converter Corporation, a U.S. limited partnership, and Victoria Converter, a Nova Scotia Company. The participants and investors in this project are Boundless Energy NW, Inc., a Delaware corporation, SBJDF Holding Corporation, a British Columbia corporation, and United States Power Fund, LP.

safeguards that are similar to those approved by the Commission in other cases. Sea Breeze states that it will hire an independent consultant to evaluate the results of the open season and will file the independent consultant's evaluation as part of the report for the open season in the event that a partner chooses to participate.

30. Sea Breeze also states that neither of the transmission systems to which the Project will be interconnected is owned by affiliates of Sea Breeze. Furthermore, Sea Breeze will maintain its own separate books of account and records in accordance with the Commission's regulations, and will make these books and records available to the Commission for inspection. Based on these representations, we find that Sea Breeze's proposal satisfies this criterion.

7. Access to Essential Facilities

31. The seventh criterion is that the Project not preclude access to essential facilities by competitors. Sea Breeze states that none of the transmission systems to which the Project will be interconnecting are owned by affiliates of Sea Breeze. To this extent, Sea Breeze states that the concerns raised by the Commission in other cases with respect to access to essential facilities and the use of rights of way are not present in this case. Based on these representations, we find that the Sea Breeze application meets this criterion.

8. Market Monitoring

32. The Commission has previously required merchant transmission lines to operate under the review of a market monitor for market power abuse. Sea Breeze states that it is willing to cooperate with an authorized market monitor, but that at this time, it is unaware of a market monitor for the proposed Project region. Sea Breeze also states that to the extent that a market monitor is established, it will cooperate and supply data to the same extent as is required by others. We recognize Sea Breeze's willingness to cooperate and establish a market monitor, but, as a merchant transmission line, will not require it to do so.

9. Reliability Requirements

33. The ninth requirement is that physical energy flows on merchant transmission facilities should be coordinated with, and subject to, the reliability requirements of the relevant ISO or RTO. Sea Breeze states that it will comply with this requirement by transferring the scheduling and operational authority of the project to BPA, BCTC, or GridWest. Thus, Sea Breeze states that the responsible entity with operational control of

the Project will be required to ensure that its reliability requirements are met when scheduling and managing flow over the facility. Sea Breeze's proposal satisfies this criterion.¹⁴

10. Pre-existing Property Rights

34. The last criterion is that transmission facilities should not impair pre-existing property rights to use the transmission grid or interconnected RTOs or utilities. Sea Breeze states that this criterion is satisfied because the rights to use the Project will not interfere with any existing rights. Sea Breeze's proposal satisfies this criterion. First, the rights for Project transmission service will be for point-to-point service and do not extend beyond the two Project interconnections. Second, Sea Breeze will transfer scheduling and operational authority over the project to BPA, BCTC, or GridWest, as appropriate. Sea Breeze states that because one of these entities will schedule and coordinate the operation of the project, the rights of the customers on the existing transmission grids will be fully protected.

C. Requests for Waivers and Blanket Approvals

35. Sea Breeze asserts that because transmission over the Project would not be in interstate commerce pursuant to section 201(c) of the FPA, it assumes that most sections of Part II of the FPA and the Commission's implementing regulations that are applicable to public utilities would not be applicable to it. On this basis, Sea Breeze assumes that it would not be subject to the statutory and regulatory requirements relating to reporting of data, interlocking directorates, and authorization for issuance of securities and assumption of liabilities. However, if the Commission finds Sea Breeze to be a public utility, then Sea Breeze requests waiver of the full reporting requirements of Subparts B and C of Part 35 of the regulations, except for sections 35.13(a), 35.13(b), 35.15, and 35.16.¹⁵

36. Sea Breeze also requests (1) waiver of Part 45 of the regulations regarding interlocking directorates, with filing of an abbreviated statement under Part 46 identifying jurisdictional interlocks, and (2) blanket authorization for issuances of securities or

¹⁴ On September 1, 2005, the Commission issued a notice of proposed rulemaking entitled, *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, 112 FERC ¶ 61, 239 (2005). We expect that Sea Breeze will meet the reliability standards enumerated in the final rulemaking.

¹⁵ 18 C.F.R. Part 35 (2005).

assumptions of liabilities pursuant to section 204 of the FPA, and Part 34 of the Commission's Regulations.¹⁶ Sea Breeze argues that waiver of Part 45 and blanket authorization under section 204 is warranted because it is a very small organization with only a few officers and employees, the Project will be the only transmission asset that it will own, and it will not have operational authority over the Project. It asserts that, under these circumstances, the burdens associated with compliance with Part 45 and section 204 outweigh any benefits. Further, Sea Breeze requests waiver of the Form No. 1 filing requirements for the same reasons the Commission granted such a waiver in *See Cross-Sound Cable Co., LLC*.¹⁷

37. As noted above, we disagree with Sea Breeze's assertion that the Project does not constitute transmission in interstate commerce pursuant to section 201(c) of the FPA. Therefore, we find that Sea Breeze, as the owner of the Project, is a public utility for purposes of Part II of the FPA.

38. Consistent with our rulings in other merchant transmission proceedings,¹⁸ we will grant the request for waiver of the regulations pertaining to cost-based rate data because Sea Breeze will provide service at non-cost based, negotiated rates.¹⁹

39. The Commission denies Sea Breeze's requests for waiver and blanket approval concerning interlocks and issuance of securities and assumption of liabilities because: (1) compliance with these requirements is required by the FPA and our regulations; (2) Sea Breeze has not made a sufficient affirmative showing that exceptions to those statutory requirements and regulations are warranted; and (3) while the Commission has traditionally waived non-regulatory requirements in the past for certain entities, such as power sellers with market-based rates, it has not done so for transmission providers, and such denial is therefore consistent with Commission precedent.²⁰

¹⁶ 18 C.F.R. Part 34 (2005).

¹⁷ *Cross-Sound Cable Co., LLC*, 108 FERC ¶ 61,277 (2004).

¹⁸ *See TransEnergie U.S. Ltd.*, 98 FERC ¶ 61,147 at 61,502 (2002); *TransEnergie U.S. Ltd.*, 98 FERC ¶ 61,144 at 61,457 (2002).

¹⁹ *See Ameren Energy Generating Co.*, 93 FERC ¶ 61,024 at 61,046-47 (2000), *reh'g denied*, 95 FERC ¶ 61,009 (2001).

²⁰ *See, e.g., TransEnergie*, 98 FERC ¶ 61,147 at 61,502; *TransEnergie*, 98 FERC ¶ 61,144 at 61,457.

40. The Commission will grant Sea Breeze's motion for waiver of the Form 1 filing requirement. In analyzing Sea Breeze's request for waiver, the Commission needs to weigh (1) the need for the Commission and the public to have access to the information contained in Form 1, and (2) developing policies which will promote competition. For public utilities with cost-based rates, the information provided in Form 1 is necessary to ensure that rates are reasonable. However, Sea Breeze's rates will be negotiated rather than cost-based rates. Rather, like merchant generators with market-based rate authority, Sea Breeze will have no captive customers. On balance, especially given that there is no immediate need for this information, the Commission will grant Sea Breeze's motion for waiver of the Form 1 filing requirement.²¹

The Commission orders:

A. The Commission hereby authorizes Sea Breeze's merchant transmission project, as discussed in the body of this order.

B. Sea Breeze is directed to file a report of the open season results with the Commission within 30 days of the close of the open season, as discussed in the body of this order.

C. The Commission grants Sea Breeze'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, as discussed in the body of this order.

D. The Commission denies Sea Breeze's requests for authorization to make abbreviated filings under Part 45 and blanket approvals under Part 34 of the Commission's regulations, as discussed in the body of this order.

E. The Commission grants Sea Breeze's request for waiver of the Form 1 filing requirement, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

²¹ See *Cross-Sound Cable Co., LLC*, 108 FERC at P8.