

129 FERC ¶ 61,154
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Montana Alberta Tie Ltd.
MATL LLP

Docket No. ER09-1618-000

ORDER ON REQUEST FOR AUTHORIZATION TO GRANT
OWNERSHIP RIGHTS AND REQUEST FOR WAIVER OF
OPEN SEASON REQUIREMENTS

(Issued November 19, 2009)

1. Montana Alberta Tie Ltd. (MATL) and MATL LLP (collectively, Applicants) filed, pursuant to section 205 of the Federal Power Act (FPA),¹ a request for authorization to grant to Western Area Power Administration (Western) capacity and ownership rights in Applicants' merchant transmission line as a part of a financing arrangement for the construction of the line. Applicants also requested waiver of the open season provision of MATL LLP's open access transmission tariff (Tariff) to the extent necessary to allow Western to obtain these ownership rights. As discussed below, this order grants Applicants' requests.

I. Background and Filing

2. Applicants state that MATL is a merchant transmission company incorporated pursuant to the federal laws of Canada and registered to conduct business in the Province of Alberta and the State of Montana. Applicants state that MATL LLP is a limited liability partnership organized under the laws of, and registered to conduct business in, Montana, and is owned 99.5 percent by MATL, the limited partner. According to Applicants, they are in the process of developing a 214-mile, 230-kV merchant transmission line (Project) that would extend from Great Falls, Montana, to Lethbridge, Alberta, Canada. Applicants state that MATL will develop and operate the transmission

¹ 16 U.S.C. § 824d (2006).

line pursuant to MATL LLP's Tariff² and co-own it with MATL LLP. Applicants explain that MATL will own the Canadian portion of the transmission line, and MATL LLP will own the United States portion. Applicants expect the line to begin commercial operation by the fourth quarter of 2010. According to Applicants, all of the capacity on the Project has been purchased by wind generator developers pursuant to an open season process.³

3. On August 11, 2009, in Docket No. ES09-46-000, Applicants sought authorization under section 204 of the FPA⁴ to issue an aggregate amount of \$161 million in debt securities and to assume obligations and liabilities pursuant to a financing arrangement for construction of the Project. The financing arrangement, entered into with Western under the American Reinvestment and Recovery Act of 2009 (Recovery Act),⁵ consists of a construction loan whereby Western will advance construction draws to Applicants to pay for the construction cost of the line. As part of the financing arrangement, Applicants agreed to grant Western ownership and capacity rights in the line (described below). Upon completion of the construction of the line and subject to certain conditions, the construction loan will mature and convert into a 30-year term loan. The Commission authorized the issuance of these securities in an order dated September 1, 2009.⁶

² Applicants state that MATL filed the original section 205 application with the Commission for permission to sell transmission rights on the line at market-based rates. Subsequently, MATL established MATL LLP as a United States entity to own and operate the United States portion of the line and to provide transmission service under its Tariff. Applicants state that in orders granting permission to sell transmission rights at negotiated rates and accepting MATL LLP's Tariff, the Commission treated both MATL and MATL LLP as public utilities. Citing *Montana Alberta Tie Ltd.*, 116 FERC ¶ 61,071 (2006); *Montana Alberta Tie Ltd.*, 119 FERC ¶ 61,216 (2007). Thus, Applicants state that they are both submitting this filing under section 205 of the FPA.

³ Applicants state that MATL LLP has received requests for 180 MW of southbound transmission service from Invenergy Wind Montana LLC and for 120 MW of southbound transmission service from Wind Hunter, LLC, each with a term of approximately 30 years.

⁴ 16 U.S.C. § 824c (2006).

⁵ American Reinvestment and Recovery Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009).

⁶ *Montana Alberta Tie Ltd.*, 128 FERC ¶ 61,217 (2009).

4. In this filing, Applicants request authorization under section 205 of the FPA to grant Western the ownership and capacity rights in the Project agreed to as part of the financing arrangement. Specifically, Applicants seek authorization to grant Western a 1/12th ownership interest in the Project, comprising approximately 18 miles of the 214-mile line, and a conditional ownership interest in perpetuity for 50 MW of southbound capacity. Applicants state that Western's right to this southbound capacity is subject to the pre-existing arrangements for 300 MW of southbound transmission service with existing interconnection customers and any necessary regulatory approvals.⁷

5. Applicants explain that Western's use or sale of these transmission rights would be subject to Western's tariff. Applicants state that when Western is not using its capacity, it will release the capacity to MATL to be marketed under MATL LLP's Tariff, with the revenues from such sales shared on a 75/25 basis (75 percent to Western). Applicants also state that the ownership interests will not convey to Western any right to operate the transmission line, sell transmission rights apart from the 50 MW of southbound capacity, or otherwise allow Western to administer MATL LLP's Tariff.

6. Applicants state that MATL's initial application to sell up to 300 MW of transmission rights at market-based rates was based on the facts and circumstances at the time, including the fact that MATL was not affiliated with any market participant, and that MATL would allocate transmission rights through a non-discriminatory open season process. Applicants state that, although the financing arrangement creates no affiliation with Western, they are making this filing out of an abundance of caution to the extent required under section 205 for authorization to grant Western a conditional right to 50 MW of southbound capacity and a 1/12th ownership interest in the Project.

7. Applicants also request, to the extent necessary, waiver of the open season provision of Schedule 7 of MATL LLP's Tariff. Applicants contend that good cause exists to grant this waiver because the arrangement does not constitute a sale of capacity, but rather allows Western to acquire a conditional ownership interest in 50 MW of southbound capacity subject to the pre-existing rights of customers who obtained interests in all 300 MW through the open season. In other words, Applicants state that Western will only acquire the interest in capacity if the open season participants do not satisfy the requirements under their long-term service agreements. Applicants explain

⁷ Applicants state that the financing arrangement also grants Western a priority right to 50 MW of northbound expansion capacity, if and when Applicants expand their transmission facilities in the future. Applicants state that they are not seeking section 205 authorization for Western to acquire this expansion capacity at this time, and that any such request would be the subject of a future section 205 filing.

that the conveyance of the ownership rights is a condition of this unique financing arrangement that became available through Western under the Recovery Act in Spring 2009, and that without this financing the transmission line will not be built.

8. On September 10, 2009, Applicants filed supplemental information clarifying that Western's 1/12th ownership interest, comprising approximately 18 miles of the line, will not modify in any way the transmission service rights of Applicants' customers or require those customers to pay additional transmission charges for their transmission rights, and that MATL LLP will continue to provide transmission service over the entire line pursuant to its Tariff, including the 18-mile segment. Applicants also reiterate that the conveyance of an ownership interest in the 18-mile segment does not transfer operational responsibilities for that portion of the line to Western.

II. Notices of Filing and Interventions

9. Notice of the original filing was published in the *Federal Register*, 74 Fed. Reg. 46192 (2009), with interventions and protests due on or before September 11, 2009. Timely motions to intervene raising no issues were filed by NaturEner USA, LLC and Western. Notice of the supplemental filing was published in the *Federal Register*, 74 FR 48727 (2009), with interventions and protests due on or before September 21, 2009. None were filed.

III. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁸ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

11. As discussed below, we accept Applicants' proposed financing arrangement with Western. Accordingly, we grant the authorization and limited waiver sought by Applicants in the instant filing.

12. The debt financing arrangement between Applicants and Western, made possible by authority given to Western pursuant to the Recovery Act,⁹ does not result in an

⁸ 18 C.F.R. § 385.214 (2009).

⁹ American Reinvestment and Recovery Act § 402, 123 Stat. at 141-143 (granting Western borrowing authority for the purpose of "constructing, financing, facilitating, planning, operating, maintaining, or studying construction of new or upgraded electric
(continued)

affiliation between the two entities so as to trigger concerns regarding MATL's negotiated rate authority.¹⁰ Applicants will continue to assume the full risk of the Project in the same way as if they had secured financing through a more traditional lending institution. While the debt financing arrangement presented here may be different as compared to a more traditional lender/debtor relationship, it is functionally the same for the purposes of evaluating Applicants' instant requests. MATL must repay what will ultimately mature into a 30-year term loan, and Western will hold a security interest in the Project giving Western the right to assume control and operate the Project in the event of an uncured default.¹¹

13. The additional interests granted to Western as part of the financing arrangement, for which Applicants seek authorization in this filing, do not change the fact that Applicants remain at risk for the Project and will not be enabled through this financing arrangement to subsidize the Project by imposing costs on a captive pool of ratepayers. As components of the above-described financing arrangement, these ownership rights do not raise market power or other concerns, and instead may serve to further discipline the rates that MATL could charge for transmission service. In this regard, to the extent Western acquires the 50 MW of southbound transmission rights, its use or sale of these rights will be pursuant to Western's cost-based-rate tariff. In addition, Western cannot withhold any capacity because to the extent that Western does not use these rights, they will be released to MATL, for sale pursuant to MATL LLP's Tariff. In this way, the transaction provides that the capacity will be offered under the terms of one of the entities' tariffs, which should prevent any unsold capacity from being withheld from the market.

14. The rights transferred to Western as part of the financing arrangement will help Western repay amounts that it borrows to carry out its new authority,¹² while at the same time realizing the development of transmission infrastructure intended by the Recovery

power transmission lines and related facilities..." and "delivering or facilitating the delivery of power generated by renewable energy resources constructed or reasonably expected to be constructed after the date of enactment of this section").

¹⁰ See *Montana Alberta Tie Ltd.*, 116 FERC ¶ 61,071 (2006) (granting MATL negotiate rate authority for the Project).

¹¹ *Montana Alberta Tie Ltd.*, 128 FERC ¶ 61,217, at P 4 (2009).

¹² American Reinvestment and Recovery Act § 402, 123 Stat. at 141-143. ("[Western] shall apply the proceeds from the use of the transmission capacity from an individual project under this section to the repayment of the principal and interest of the loan from the Treasury attributable to that project.").

Act. Moreover, we find the financing arrangement, viewed as a whole, represents a just and reasonable way to advance the Project, currently in the late stages of development, to the construction phase. Accordingly, we grant the authorization requested by Applicants to allocate rights to Western in the manner described above.

15. Applicants also seek waiver of Schedule 7 of MATL LLP's Tariff to the extent needed to accommodate the above-described financing arrangement. For good cause shown, we grant Applicants' limited waiver request. Importantly, MATL already has allocated all of the initial capacity through a fair and non-discriminatory open season, which has been approved by the Commission.¹³ Moreover, once Western's right to capacity matures, the capacity will be made available pursuant either to Western's or MATL LLP's tariff, thereby ensuring the continued non-discriminatory allocation of capacity.

The Commission orders:

(A) Applicants' request for authorization to transfer the above-described ownership rights in the Project to Western is hereby granted.

(B) For good cause shown, Applicants' request for limited waiver of Schedule 7 of MATL LLP's Tariff is hereby granted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹³ *Montana Alberta Tie Ltd.*, 112 FERC ¶ 61,018 (2005).