UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Grain Belt Express Clean Line LLC) **Docket No. ER14-___-000**

APPLICATION FOR AUTHORIZATION TO SELL TRANSMISSION SERVICE RIGHTS AT NEGOTIATED RATES, REQUEST FOR APPROVAL OF CAPACITY ALLOCATION PROCESS, AND REQUEST FOR WAIVERS

Pursuant to section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (2012), and Part 35 of the regulations of the Federal Energy Regulatory Commission (FERC or Commission), 18 C.F.R. Part 35 (2013), Grain Belt Express Clean Line LLC (Grain Belt Express or Applicant) respectfully requests Commission authorization to sell transmission service rights on its Grain Belt Express transmission project (Project) at negotiated rates and explicit Commission approval of the capacity allocation process set forth in this Application. The Project is a proposed 750-mile, overhead high voltage direct current (HVDC) transmission line from western Kansas to southwestern Indiana that will be capable of delivering 3,500 megawatts (MW) of power. Upon completion of the Project, Applicant will turn over operational control of the Project to a Regional Transmission Organization (RTO), which will operate the line pursuant to a FERC-approved non-discriminatory rate schedule for the Project filed under the RTO's Open Access Transmission Tariff (OATT).

Applicant intends to allocate up to 100% of the Project's initial capacity to one or more transmission customers through an open and transparent solicitation and capacity allocation process described in detail below. Applicant requests Commission approval of its proposed open solicitation and capacity allocation process subject to Applicant's

commitment to demonstrate in one or more post-allocation compliance filings that its selection of customers is consistent with the Commission-approved process.

Because Applicant is proposing to charge negotiated rates for transmission service rights, Applicant also requests certain waivers of the Commission's regulations and reporting requirements related to cost-of-service rate regulation. As explained below, the requested waivers are consistent with waivers previously granted to merchant transmission owners with negotiated rate authority.

I. COMMUNICATIONS

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II. DESCRIPTION OF APPLICANT

Grain Belt Express is a limited liability company organized under the laws of the State of Indiana and qualified to conduct business in the states of Kansas, Missouri, Illinois, and Indiana. Grain Belt Express' principal offices are located at 1001 McKinney Street, Suite 700, Houston, Texas 77002.

Grain Belt Express is a wholly-owned subsidiary of Grain Belt Express Holding LLC, a Delaware limited liability company, which is a wholly-owned subsidiary of Clean Line Energy Partners LLC (Clean Line), also a Delaware limited liability company. Clean Line was formed to develop, construct, and own high voltage transmission lines and associated facilities designed to connect the best renewable resources in the United

States and to deliver their output to load and population centers that have an increasing demand for electricity generated by renewable resources. Clean Line, through its wholly-owned direct and indirect subsidiaries, has five high voltage transmission line projects under development in different regions of the United States.[1]

Clean Line is supported by investors with significant experience in the energy industry that understand the need to maintain a long-term investment focus as projects are brought to fruition. Clean Line's primary owners are ZAM Ventures, L.P. (ZAM Ventures) and GridAmerica Holdings Inc. (GridAmerica). ZAM Ventures is the principal investment vehicle for ZBI Ventures, L.L.C. (ZBI Ventures). ZBI Ventures, which focuses on long-term investments in the energy sector, is a subsidiary of Ziff Brothers Investments, L.L.C. GridAmerica is a subsidiary of National Grid USA, which is a subsidiary of National Grid plc. National Grid plc and its affiliates comprise one of the largest investor-owned utility companies in the world and have extensive experience building, owning, and operating transmission networks in the United States and the United Kingdom. Through various subsidiaries, National Grid USA delivers electricity

[1] Clean Line currently has five major transmission projects underway in the United States. They are (1) the Project; (2) Rock Island Clean Line, an HVDC transmission line that will transmit up to 3,500 MW of renewable power from northwest Iowa and the surrounding area to load centers in Illinois and states farther east; (3) Plains & Eastern Clean Line, an 800-mile HVDC line that will transmit up to 3,500 MW of renewable power from the Oklahoma and Texas Panhandles, and potentially Kansas, to the Tennessee Valley Authority and the southeastern United States; (4) Centennial West Clean Line, an HVDC line that will transmit up to 3,500 MW of renewable power from eastern New Mexico and west-central Arizona to load centers such as southern Nevada, southern California, Arizona, and other areas in the Southwest; and (5) Western Spirit Clean Line, which Clean Line and the New Mexico Renewable Energy Transmission Authority are jointly developing and which consists of an approximately 200-mile, 345 kV alternating current transmission line that will transmit up to 1,500 MW of renewable power from east-central New Mexico to markets in the western United States.

to more than three million customers in Massachusetts, New York, and Rhode Island, all of which are markets that are remote from the Project.

Clean Line's investors are providing the critical initial support for the Project but do not intend to assume operational responsibility for the Project. As discussed herein, Applicant will control such operations until the Project is constructed, at which point Applicant will turn operational control of the line over to an RTO. Service on the line will be governed by a FERC-approved non-discriminatory rate schedule for the Project administered under the RTO's OATT.

III. DESCRIPTION OF THE PROJECT

A. Overview

The Project is a proposed 750-mile, multi-terminal ±600 kilovolt (kV) HVDC transmission line and associated facilities that will be capable of delivering 3,500 MW from western Kansas to southwestern Indiana, with a connection point in Missouri. The associated facilities will include converter stations at each end of the Project, as well as an intermediate converter station, transmission facilities to connect the converter stations to the existing transmission grid, and a collector system comprised of alternating current (AC) transmission lines needed to connect wind generators to the western terminus of the line.[2]

The Project will originate near the Spearville 345 kV substation in Ford County, Kansas, located within the Southwest Power Pool, Inc. (SPP) footprint and will terminate near the Sullivan 765 kV substation in Sullivan County, Indiana, located within the PJM

[2] While Applicant anticipates that some wind generators will construct the delivery facilities necessary to access the Project from the location of their generation, Applicant may construct some of these facilities to facilitate generators' access to the western terminus of the line.

Interconnection, L.L.C. (PJM) footprint. The Project will include an intermediate converter station near the Maywood 345 kV substation in Missouri, which is located within the Midcontinent Independent System Operator, Inc. (MISO) footprint.

The Project's converter stations will convert AC electricity delivered to the Project into DC electricity and will convert the electricity back to AC for delivery into the grid. Consequently, the Project will have no parallel flow effects on SPP, MISO, PJM, or other transmission service territories. The Project's HVDC technology can transfer significantly more power with lower line losses over long distances than comparable AC lines and allows for a narrower right-of-way and fewer conductors over the path of the line. In addition, HVDC technology allows the operator direct control of energy flows, which is ideal for managing the injection of variable generation and accurately assessing customers' use of the line, as well as identifying users of the Project.

As described below, the Project currently is in the development and permitting phase. The development and construction of the Project is estimated to cost $2.2 billion. As a merchant transmission line, this cost will be borne by Clean Line's investors and the Project's customers, and will not be recovered through any regional cost allocation process. Applicant expects to commence construction of the Project as early as 2016 and place the Project in service as soon as 2018.

B. Project Benefits

The Project is designed to facilitate the development and export of wind resources from western Kansas to load and population centers in MISO and PJM. Although Kansas has vast untapped wind potential, development of the wind-rich region of western Kansas currently is constrained by transmission limits. By connecting Kansas' abundant supply

of wind with large and growing markets for renewable power, the Project will enable the development of thousands of megawatts of high capacity factor wind resources. It is estimated that the Project will make possible approximately $7 billion of investment in new renewable power projects that could not otherwise be built due to limitations of the existing electric transmission grid. Once the Project is in service, it is expected to deliver enough power for 1.4 million homes per year.

The ability to deliver energy directly to load centers while mitigating existing transmission constraints in the resource area is an important benefit of the Project. HVDC technology allows energy to flow long distances without directly affecting the power flow on the AC transmission grid in the regions that the HVDC line traverses. Moreover, to the extent that a new HVDC transmission line reduces the amount of energy that would otherwise flow on the existing AC grid, the result is improved reliability, reduced losses, and reduced congestion on the existing AC lines, which lowers the overall cost of energy production dispatched on the AC grid. In addition, the Project will provide added stability and reliability to the SPP, MISO, and PJM systems.

C. Development Status

Since the Project began in 2010, Grain Belt Express has invested more than $6.5 million in development activities and has achieved key milestones. Because the Project is an inter-regional transmission project that will traverse the footprints of three RTOs, Applicant is conducting studies with each of SPP, MISO, and PJM to ensure that the Project will safely and reliably interconnect with the existing transmission grid. The Project has completed the interconnection studies required under SPP's Criteria 3.5 and in August 2013, SPP affirmed that the Project will cause no harm. Applicant will begin

working with ITC Great Plains, LLC on an interconnection agreement that will determine the direct assignment facilities that are required for the Project's interconnection and all interconnection requirements. Applicant also will continue discussions with SPP regarding the need for appropriate operating agreements, seams agreements, and possible administrative requirements.

Pursuant to an interconnection request filed in September 2012, MISO currently is studying the impacts of the Project in delivering 500 MW of power into the existing 345 kV system at the Project's intermediate converter station in northeastern Missouri. MISO completed a feasibility study in October 2012, which did not identify any constraints associated with the injection in MISO. Additionally, Grain Belt Express is working with PJM to complete the necessary studies for interconnection at the Sullivan/Breed 345 kV substation in southwestern Indiana. PJM completed a feasibility study in January 2013, and initiated a system impact study in February 2013.

Applicant has received public utility status from the Kansas Corporation Commission (KCC) and from the Indiana Utility Regulatory Commission. Applicant is in the process of determining the Project's specific route and obtaining related siting approvals. On November 7, 2013, the KCC issued an order granting a siting permit to Applicant to construct the Kansas portion of the Project.[3] Applicant intends to pursue the necessary regulatory approvals from the Missouri Public Service Commission and the Illinois Commerce Commission in 2014 and 2015, respectively.

[3] See Order Granting Siting Permit, Docket No. 13-GBEE-803-MIS (Nov. 7, 2013).

D. Public Outreach

Public outreach and active stakeholder involvement are key components of Applicant's approach to development of the Project. Beginning in 2010, Grain Belt Express implemented an extensive, methodical, multi-level public outreach strategy across Kansas, Missouri, Illinois, and Indiana, which has resulted in more than 1,000 in-person meetings across the Project area as of November 2013. Grain Belt Express also has maintained an active presence online and through social media. The Project's website, www.grainbeltexpresscleanline.com, has been actively updated since the beginning of the Project in 2010. Among other information, the website contains: a project video that describes the need for the Project and how Grain Belt Express will bring significant economic benefit to states through much-needed transmission expansion for new wind energy projects; an FAQ section for all stakeholders to learn greater details about the Project; a section on how local businesses can learn about opportunities to participate in the construction of the Project; and information regarding Project meetings, maps, studies, regulatory filings, and third-party resources. In addition, Grain Belt Express distributes a newsletter on a regular basis to hundreds of stakeholders. These newsletters provide information on Project milestones, recent events and meetings, as well as upcoming Project activities. The newsletter is available to anyone who is interested in receiving a copy. Applicant's participation in multiple state regulatory proceedings also has publicized information regarding the Project.

E. Project Schedule

Applicant continues to work closely with land use and routing experts as well as landowners, local government officials, state and federal agencies, and other stakeholders

in the areas where the Project will be built in order to gather input and determine the specific route for the transmission line in each state that it will traverse. Applicant is consulting experts on topics such as threatened and endangered species, archaeology, and cultural resources to ensure that appropriate considerations are taken into account in the routing decisions. Applicant expects to obtain all necessary authorizations from federal, state, and local governments and agencies for the Project by 2016.

As permitted under the Commission's Final Policy Statement issued in Docket Nos. AD12-9-000 and AD11-11-000 (Policy Statement), Applicant is seeking Commission approval of its proposed open solicitation and initial capacity allocation process prior to implementing that process.[4] Upon obtaining such approval and Commission authorization to charge negotiated rates, Applicant intends to initiate an open solicitation of interest in the Project to identify potential customers. Applicant subsequently will engage in discussions and negotiations with potential customers pursuant to the parameters of the customer selection and capacity allocation process to be approved by the Commission in acting on this Application. Applicant anticipates that customer agreements will be finalized (subject to after-the-fact Commission approval) prior to commencement of construction of the Project, which is scheduled to occur in 2016. The Project is expected to be completed and placed in service as early as 2018.

In addition to submitting one or more post-allocation compliance filings regarding Applicant's selection of initial customers and bilateral negotiations, Applicant will

[4] Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects; Priority Rights to New Participant-Funded Transmission, 142 FERC ¶ 61,038 at P 31 (2013) (Policy Statement).

develop a rate schedule to be filed under the appropriate RTO's OATT prior to energizing the Project.

IV. REQUEST FOR NEGOTIATED RATE AUTHORITY

Applicant requests Commission authorization to charge negotiated rates for transmission service rights on the Project. Applicant further requests Commission authorization to allocate up to 100% of the Project's capacity through bilateral negotiations and Commission approval of Applicant's proposed capacity allocation process described below.

Applicant is a merchant transmission developer that is investing in a major new transmission project that would not be built but for merchant investment. The development and construction costs for the Project will be approximately $2.2 billion. Through its investors, Applicant has strong financial backing to support the Project's early development activities. However, Applicant must have recourse to the financial markets to secure the investment and debt capital necessary to develop and construct the Project.

The Commission has acknowledged the substantial financial requirements of merchant transmission developers and affirmed its "commitment to fostering the development of merchant transmission projects through [its] adoption of a more flexible approach toward negotiated rate applications."[5] In order to address both the financing realities faced by merchant transmission developers and the consumer protection mandates of the FPA and the Commission's open access requirements, the Commission applies a four-factor analysis in evaluating negotiated rate applications: (1) the justness

[5] Chinook Power Transmission, LLC, 126 FERC ¶ 61,134 at P 54 (2009) (Chinook).

and reasonableness of rates; (2) the potential for undue discrimination; (3) the potential for undue preference, including affiliate preference; and (4) regional reliability and operational efficiency requirements.[6] As demonstrated herein, Applicant's proposal to charge negotiated rates satisfies all four factors of the Commission's analysis.

Applicant intends to allocate up to 100% of the Project's capacity through negotiated bilateral long-term contracts consistent with the process identified in the Policy Statement. Under the Policy Statement, a merchant transmission developer may "select a subset of customers, based on not unduly discriminatory or preferential criteria, and negotiate directly with those customers to reach agreement on the key rates, terms, and conditions for procuring up to the full amount 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]."[7] A developer may make distinctions among prospective customers based on "transparent and not unduly discriminatory or preferential criteria – so long as the differences in negotiated terms recognize material differences and do not result in undue discrimination or preference – with the potential that a single customer, including an affiliate, may be awarded up to 100 percent of capacity."[8] Applicant requests that the Commission explicitly find that Applicant's proposal to allocate up to 100% of the Project's capacity through an open, transparent, and non-discriminatory process described in detail below satisfies the requirements of the Policy Statement.

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[6] Chinook at P 37.
[7] Policy Statement at P 16.
[8] Id. at P 28.

A. Satisfaction of the Four-Factor Analysis

1. Just and Reasonable Rates

The Commission requires that a merchant transmission developer's negotiated rates must be just and reasonable.[9] The Commission considers whether the merchant transmission developer has assumed the full market risk for the project's cost and whether the merchant transmission developer has any "captive" customers that would be required to pay the cost of the project.[10] The Commission also considers whether the merchant transmission owner (or an affiliate) owns other transmission facilities in the same area as the project; what alternatives customers have; whether the merchant transmission owner controls any barriers to entry among competitors; and whether the merchant transmission owner has any incentive to withhold project capacity.[11]

Applicant is assuming all market risk associated with the development and construction of the Project, and Applicant does not have and will not have any captive customers. Accordingly, Applicant has no ability to pass through the Project's costs to captive ratepayers. Applicant is a new entrant to the transmission markets in SPP, MISO, and PJM. In addition, none of Applicant's affiliates owns or controls transmission facilities in the same area served by the Project.[12] Further, neither Applicant nor its

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[9] Chinook at P 38.
[10] Id.
[11] Id.
[12] As noted above, an affiliate of Applicant is developing Rock Island Clean Line, an HVDC line that will interconnect to the PJM BAA. However, the Project and Rock Island Clean Line will serve different areas within the PJM BAA – i.e., the Project will terminate in southwestern Indiana and Rock Island Clean Line will terminate in Illinois. In any event, transmission service rates on both the Project and Rock Island Clean Line will be subject to the Commission's jurisdiction and open access requirements. Therefore, the Applicant's affiliation with Rock Island Clean Line does not raise any market power issues. Further, while Applicant also is affiliated with National Grid USA,

affiliates owns or controls other barriers to market entry or has any incentive to withhold capacity on the Project.[13]

Once the Project is completed, Applicant will turn over operational control of the Project to an RTO, which will operate the line pursuant to a FERC-approved non-discriminatory rate schedule filed under the RTO's OATT. No potential customer is required to purchase transmission service from Applicant. Further, because potential customers can pursue alternative transmission service from incumbent transmission owners operating where the Project will be built at cost-of-service rates (capped at the incumbent utility's cost of expansion), customers will purchase transmission service from Applicant only to the extent that it is cost-effective to do so. Moreover, there are potentially competing transmission projects being considered in the area that provide an alternative to the Project and therefore will discipline Applicant's negotiated rates. The Commission also 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.[14]

All of these factors establish that Applicant lacks market power with respect to transmission service to be provided in the Project's geographic area and that there are ample disciplining forces to ensure competitive pricing for service on the Project. Thus,

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the utility operations of National Grid USA are located in New York and New England, which are remote markets from the Project.

[13] Cf. Mountain States Transmission Intertie, LLC and NorthWestern Corporation, 127 FERC ¶ 61,270 at P 63 (2009) (denying a request for negotiated rate authority for a proposed transmission project located within the footprint of an affiliate's traditionally regulated transmission system, because it would create the incentive for the traditionally regulated affiliate to withhold capacity or to delay the timely expansion of its facilities in response to requests for service under its OATT as a means of favoring the proposed project).

[14] Chinook at n. 26.

Applicant's proposal to charge negotiated rates for transmission service rights satisfies the Commission's just and reasonable rate criterion for granting negotiated rate authority.

2. No Potential for Undue Discrimination

The Policy Statement allows a merchant transmission developer to demonstrate no undue discrimination or preference by conducting a solicitation, selection, and negotiation process that complies with the requirements of the Policy Statement.[15] Applicant has relied on the Commission's Policy Statement in developing its open solicitation and customer selection process detailed below. Applicant's open solicitation and initial capacity allocation process will be fair and transparent, and potential customers will be able to avail themselves of FERC complaint procedures, if necessary. Therefore, Applicant's proposal to allocate up to 100% of the Project's transmission capacity through bilateral negotiations will not lead to undue discrimination.

a. Open Solicitation Process

As indicated above, Applicant has already invested considerable time and effort publicizing the Project in the relevant markets. To date, Applicant has spent over three years engaged in public outreach efforts to raise awareness of the Project. Applicant also is an active participant in local, regional, and RTO forums, as well as energy industry groups, whose members may be interested in obtaining access to the Project. Applicant will continue all of these efforts in parallel with its open solicitation of interest in the Project.

Applicant's open solicitation process will be designed to access all potential customers. Applicant will commence its open solicitation by issuing a detailed notice

[15] Policy Statement at P 15.

that will be posted on the Project's website and widely distributed through the following outlets: energy trade magazines and websites; regional energy publications; energy trade associations such as American Wind Energy Association, Electric Power Supply Association, and Edison Electric Institute; RTO and regional planning groups in SPP, MISO, and PJM; and RTO and regional reliability entity stakeholder e-mail distribution lists in SPP, MISO, and PJM.

The initial notice of Applicant's open solicitation will describe the technical aspects of the Project, including the size and capacity rating, end points of the line, location of the intermediate converter station, associated AC collector system, and the HVDC technology. The notice also will provide a Project development and construction schedule and the projected in-service date.

The notice will list Applicant's customer selection and ranking criteria for negotiated agreements (discussed in Section IV.2.b., below) and include time-defined, phased negotiation windows based on such criteria. In the event that Applicant has developed a form of customer agreement prior to the open solicitation, the notice will describe the form of customer agreement.

The notice will disclose estimated development and construction costs to assist customers in determining the viability of potential terms and conditions of service such as price and other financial commitments. The notice also will provide potential customers with the option to request a preliminary meeting to discuss bid considerations. Any such preliminary meetings will be publicly noticed on Applicant's website at least two weeks prior to the meeting and will be open to all interested parties. Further, any new

information provided by Applicant at such meetings will be posted on Applicant's website.

Finally, the open solicitation notice will identify all key points of contact for the Project and include the Project's website address where interested customers may sign up to receive electronic updates regarding the Project. 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.

b. Capacity Allocation Process

The Commission has recognized that merchant transmission developers and customers may require individualized contract terms to meet project-specific needs.[16] To accommodate these needs, the Policy Statement allows developers to distinguish among prospective customers based on "transparent and not unduly discriminatory or preferential criteria."[17] Applicant has developed objective criteria for both selecting and ranking transmission customers seeking to reserve Project capacity through negotiated agreements. Applicant's proposed criteria are intended to incent early movers and minimize commercial risks that could adversely affect the economic viability of the Project.

(i) Customer Selection Criteria

Applicant's customer selection criteria are initial screening factors that set the preferred minimum standard for all potential customers who respond to the Project's open solicitation. Potential customers that satisfy the selection criteria will then be

[16] Policy Statement at P 28.
[17] Id.

ranked according to the ranking criteria (described below) for purposes of phasing negotiations among the selected customers.

Applicant proposes to initially select potential customers among all bids on the basis of the following selection criteria:

(1) First mover status – i.e., the commitment to pursue a customer agreement during the negotiation windows set forth in Applicant's open solicitation notice;

(2) Investment grade credit rating or other standards of creditworthiness to be specified in the open solicitation notice;

(3) Commitment to pay a non-refundable deposit upon execution of a customer agreement;

(4) Firm transmission service reservation for at least 5 years; and

(5) Firm transmission service reservation for at least 50 MW of capacity.

The proposed selection criteria are designed to ensure that the Project has sufficient commercial support to move forward with development. In order to secure construction funding for the Project, Applicant must be able to demonstrate that the Project will have a long-term, creditworthy customer base. The early commitment required for first mover status allows Applicant to secure customer agreements within the time frame required to obtain construction financing for the Project. However, customer agreements are of little value to the Project if customers are not able to meet appropriate credit requirements or back out of the agreements. Therefore, Applicant's customer selection criteria include a minimum creditworthiness requirement. Potential customers

that do not have an investment grade credit rating will still be able to pursue transmission service rights by providing alternative forms of credit support.

Applicant also proposes to include a non-refundable deposit and certain minimum terms of service in its initial open solicitation. The non-refundable deposit due upon signing an agreement reflects a customer's willingness to share Project risk and commitment to move forward. In addition, Applicant proposes to select customers on the basis of a minimum term of service and minimum capacity reservation. These minimum conditions are supported by practical business considerations, such as cost and efficiency, and will enable Applicant to obtain customer agreements that are adequate to advance the Project. Collectively, Applicant's proposed customer selection criteria will advance the commercial viability of the Project by significantly reducing the Project's risk, cost, and potential for delay. However, Applicant recognizes that depending on the specific needs of potential customers, it may be necessary to modify the minimum selection criteria to maximize potential customers' access to the Project. For example, if potential customers express significant desire for a lesser term of service, strict application of the proposed 5-year minimum term criterion would screen out potential customers that otherwise satisfy the selection criteria. Therefore, to the extent necessary as the solicitation proceeds and Applicant receives feedback from potential customers, Applicant may relax the customer selection criteria to accommodate more potential customers. In the event that any such adjustments are made, they will be publicly noticed and applied equally to all potential customers.

(ii) Customer Ranking Criteria

Given the size of the Project, Applicant anticipates having several time-defined negotiation phases with different subsets of customers in order to subscribe the full amount of the Project's capacity. Applicant has developed customer ranking criteria for the purpose of refining the subset of customers that may participate in each phase of negotiations. Potential customers will not be required to satisfy all of the ranking criteria. Rather, each ranking factor represents a basis for evaluating a potential customer in light of the unique and specific needs of both the Project and the customer. Not all ranking criteria will be weighted the same (e.g., depending on the needs of the Project, a potential customer who can aid in obtaining governmental authorizations may receive more weight for satisfying that criterion). While the ranking criteria will ultimately result in distinctions among potential customers (e.g., different rates, terms, or conditions), the criteria 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 that specific factor).

Applicant proposes to rank potential customers for the initial and any subsequent phases of bilateral 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 converter stations to deliver or receive power – e.g., proximity of generation resource to the line; transmission service queue positions on the adjacent system.

The proposed ranking criteria are designed to minimize commercial risk to the Project, which in turn will enable the Project to obtain reasonable construction financing terms. Because Applicant's cost to finance and construct the Project will directly affect the Project's rates, the ranking criteria benefits initial customers as well as customers who later take service on the line under Applicant's rate schedule and secondary market customers. The ranking criteria also incentivize customers to share in Project risk and development costs and thus improve the Project's long-term viability.

In addition, because the Project is an HVDC transmission line, it requires a significant power supply source at one end to be a useful project. In this case, the primary supply source is at the western terminus of the Project. Given that the advancement of the Project relies heavily on the development of these generation resources, Applicant also proposes specific ranking criteria to be applied to customers seeking Project capacity for the development of such generation:

(1) Completion of generation development milestones, including site control, equipment commitments, and off-take commitments; and

(2) Commercial operation date for generation – i.e., projected transmission service commencement date is closely aligned with the Project's in-service date.

Each of these generator-specific ranking criteria is necessary to ensure that the Project's initial capacity is appropriately allocated to customers with actual and timely need. Absent these criteria, the Project faces greater risk that negotiated agreements will be awarded to customers that later back out, because they do not have definitive project plans. Moreover, because a merchant transmission owner and its generator customers must rely on each other to complete their respective projects, they must work together to coordinate timelines and contractual arrangements. Applicant's proposed generator-specific ranking criteria reduce the risk of development failure for both the Project and its generator customers.

Applicant recognizes that potential customers may include entities without generation such as power marketers or load-serving utilities. Applicant proposes to rank non-generator customers in a comparable manner to generator customers based on the following criteria:

(1) Evidence of need for Project capacity – e.g., a power purchase agreement or other contractual arrangement requiring transmission service; and

(2) Timing of transmission service commencement date – i.e., transmission service request is closely aligned with the Project's in-service date.

As with the generator-specific criteria, these non-generator ranking criteria ensure that a potential customer has a definitive need for Project capacity and is less likely to back out of a negotiated agreement.

Lastly, Applicant proposes to rank potential customers on the basis of the material price terms contained in their initial offers. While a customer's ultimate price terms are subject to negotiation, the initial offer provides a reasonable baseline for evaluating a customer's position regarding price. In an effort to assist potential customers with understanding Applicant's pricing considerations, the Project's open solicitation notice will include estimated development and construction costs and provide potential customers with the option to request a preliminary public meeting to discuss bid considerations.

Applicant will apply these ranking criteria to customers that satisfy the selection criteria to develop a subset of one or more customers that are eligible for the initial phase of bilateral negotiations for transmission service rights. As explained above, potential customers will not be required to satisfy all of the ranking criteria and not all ranking criteria will be weighted the same, which will ultimately result in distinctions among potential customers. To the extent that the full capacity of the Project is not reserved through the initial phase of negotiations, Applicant will use the same ranking criteria to develop additional subsets of customers for subsequent phases of bilateral negotiations.

Applicant commits to disclose the results of its customer selection and ranking process and bilateral negotiations to the Commission in one or more detailed post-allocation compliance filings. In the event that the Project is oversubscribed, Applicant's compliance filing will describe its decision to prorate or not to prorate capacity among

eligible customers. The capacity of the HVDC transmission line proposed by Applicant cannot be readily modified without requiring Applicant to significantly increase the anticipated cost of subscribing to capacity on the Project, thereby making it more difficult to secure customers and financial support for the Project. If Applicant were to increase the Project's capacity, Applicant would be required to restart the interconnection process, commission new engineering and route studies, and modify the Project's converter stations, all of which would greatly increase the overall cost of the Project and transmission service charges. Applicant is not opposed to undertaking an additional phase of the Project in the future, but it would not be practically feasible, regardless of market interest, to materially increase the size of Project at this point in the Project's development cycle.

c. Additional Protection Against Undue Discrimination

The open solicitation and capacity allocation process outlined above will prevent undue discrimination with respect to the allocation of up to 100% of the Project's capacity through one or more customer agreements. In the event that any potential customer believes that Applicant has unduly discriminated against it, such potential customer may avail itself of FERC's complaint procedures.[18] Accordingly, Applicant's proposal for negotiated rate authority does not raise any undue discrimination concerns.

As an additional protective measure, Applicant commits to the following conditions customarily imposed on merchant transmission owners following commercial operation of the Project: (1) Applicant's books and records will comply with the

[18] See Chinook at P 43 (for merchant transmission owners who choose to pre-subscribe their capacity, the Commission will rely on reporting requirements and the complaint process to determine whether the merchant transmission developer has unduly discriminated against any party in the pre-subscription process).

Commission's Uniform System of Accounts (Part 101 of FERC's regulations) and will be subject to examination as required by Part 41 of the Commission's regulations; (2) Applicant will file reports in accordance with sections 141.14 and 141.15 of the Commission's regulations, to the extent applicable; and (3) Applicant's books and records will be audited by independent auditors. These commitments ensure that the Commission may effectively exercise oversight over Applicant.

3. No Potential for Undue Preference and Affiliate Concerns

The Commission's concerns regarding undue preference and affiliate abuse arise when a merchant transmission owner is affiliated with customers.[19] Applicant does not have any affiliates that currently plan to secure transmission service rights on the Project. Applicant is therefore a purely merchant transmission owner with respect to its proposal to allocate up to 100% of the Project's capacity pursuant to bilateral negotiations. However, if any affiliate of Applicant is allocated capacity on the Project, Applicant will demonstrate in its post-allocation compliance filing that the assignment of capacity to its affiliate and the corresponding treatment of unaffiliated potential customers is just, reasonable, and not unduly preferential or discriminatory. Moreover, to the extent that an affiliate takes transmission service on the Project, Applicant will maintain separate books and records that will be made available to the Commission in accordance with the Commission's regulations, and Applicant commits to comply with the Commission's Standards of Conduct, other affiliate rules, and filing requirements.[20]

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[19] Chinook at P 48.

[20] The Commission has clarified that the Standards of Conduct apply only when a transmission provider engages in transmission transactions with an affiliate. Standards of Conduct for Transmission Providers, 129 FERC ¶ 61,043 (2009).

To prevent any undue discrimination from occurring, Applicant will turn over operational control of the Project to an RTO. With respect to purchases of transmission rights on the Project after the initial capacity allocation process, both affiliates and non-affiliates will conduct such transactions according to the Project's FERC-approved rate schedule under the RTO's OATT.[21] Further, Applicant will file electric quarterly reports of its transactions as required of transmission providers. Therefore, Applicant's proposal to charge negotiated rates for transmission service rights does not raise any undue preference or affiliate concerns.

4. Regional Reliability and Operational Efficiency

The Commission encourages merchant transmission developers to consider turning over operational control of the transmission facilities to an RTO or ISO to facilitate regional reliability and enhance operational efficiencies.[22] Merchant transmission facilities also must comply with all mandatory reliability requirements. Applicant intends to turn over operational control of the Project to an RTO, which will operate the line pursuant to a FERC-approved non-discriminatory rate schedule for the Project under the RTO's OATT. Applicant also commits to participate in the reliability planning process and to comply with all applicable reliability requirements. Therefore, Applicant's proposal for negotiated rate authority does not raise any operational or reliability concerns.

V. REQUEST FOR APPROVAL OF CAPACITY ALLOCATION PROCESS

The Policy Statement permits a developer to seek Commission-approval of its capacity allocation approach prior to implementing its approach, and subsequently

[21] See Chinook at P 51.
[22] See Chinook at P 52.

demonstrate in a compliance filing that the developer's selection of customers is consistent with the approved selection process.[23] Applicant hereby requests that the Commission approve its proposed open solicitation and capacity allocation process set forth above subject to Applicant's commitment to file one or more detailed post-allocation compliance reports pursuant to section 205 of the FPA. As noted above, Applicant anticipates that its selection and ranking criteria will result in distinctions among prospective customers and individualized terms for each customer. However, any differences in negotiated terms will reflect material differences among customers and will not be the result of undue discrimination or undue preference. Applicant commits to demonstrate in its post-allocation filing(s) that Applicant's selection of customers, bilateral negotiations, and resulting customer agreements are consistent with its Commission-approved process and the Policy Statement.

VI. REQUEST FOR WAIVERS

Applicant respectfully requests waivers from certain cost-based regulatory requirements applicable to public utilities. The Commission has explained that public utility status attaches at "the earlier of the date when [an entity] commences interstate sales or transmission, or when the Commission accepts a voluntary rate filing."[24] Therefore, Applicant will become a public utility upon energizing the Project or at the time that it has an effective rate schedule on file with the Commission, whichever occurs first. Because Applicant is not submitting a rate schedule for the Project at this time, Commission action on this application does not make Applicant a public utility.

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[23] See Policy Statement at P 31.

[24] Multitrade Limited Partnership, 63 FERC ¶ 61,252 at 62,692 (1993).

However, in the interest of certainty, Applicant requests certain waivers in connection with this application that will take effect when Applicant becomes a public utility.

Specifically, Applicant requests waiver of: (1) the full reporting requirements of Subparts B and C of Part 35 of the Commission's regulations, except for sections 35.12(a), 35.13(b), 3.15, and 35.16; (2) the Form No 1, Annual Report of Major Electric Utilities, Licenses and Others (Form 1) filing requirement; and (3) Part 141 relating to forms and reports, except sections 141.14 and 141.15. Applicant requests waiver of these requirements, because Applicant will not sell transmission service at cost-based rates and does not have captive customers. The Commission has granted similar waiver requests to other merchant transmission owners with negotiated rate authority.[25] Additionally, Applicant respectfully requests waiver of any other part of the Commission's regulations as necessary to the grant the authorizations requested herein.

[25] Lake Erie CleanPower Connector, 144 FERC ¶ 61,203 (2013); Chinook at PP 68-69.

VII. CONCLUSION

For the reasons set forth above, Applicant respectfully requests that the Commission (i) grant its request for authority to sell up to 100% of the Project's transmission service rights at negotiated rates through bilateral negotiations; (ii) explicitly approve its open solicitation and capacity allocation process; and (iii) grant its request for certain waivers of the Commission's regulations.

Respectfully submitted,

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Document Content(s)