

116 FERC ¶ 61,071
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Montana Alberta Tie, Ltd.

Docket Nos. ER05-764-000
ER05-764-002

ORDER AUTHORIZING SALE OF TRANSMISSION RIGHTS SUBJECT TO
CONDITIONS, GRANTING AND DENYING WAIVERS, AND CONDITIONALLY
ACCEPTING AND SUSPENDING TARIFF SHEETS

(Issued July 20, 2006)

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 Energy (DOE) pursuant to DOE's authority under section 202(e) of the FPA,² grants

¹ 16 U.S.C. § 824d (2000).

² 16 U.S.C. § 824a(e) (2000); Secretary of Energy Delegation Order No. 00-004.00, 67 Fed. Reg. 8946 (2002), FERC Stats. & Regs. ¶ 9918 (2002). Pursuant to section 1.3 of this delegation 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

(continued...)

Montana Alberta Tie, Ltd. (MATL) authorization to sell transmission rights subject to the conditions described below. The Commission also grants certain requested waivers, denies certain requested waivers, and conditionally accepts for filing and suspends MATL's tariff sheets,³ to be effective on the date proposed, subject to refund and modification, as discussed below.

Background

2. On April 1, 2005, as amended on March 31, 2006, MATL submitted an application for authority to sell transmission rights at market-based rates and a corresponding open access transmission tariff (OATT) in connection with its proposal to develop a new 190-mile, 230 kV alternating current (AC) transmission line running from Lethbridge, Alberta, Canada to Great Falls, Montana, United States (the Project).⁴ The proposed transmission line, which is expected to be in service by April 1, 2007, would connect NorthWestern Energy's transmission system in Montana with the Alberta Interconnected Electrical System, operated by the Alberta Electric System Operator (Alberta ESO). Additionally, MATL will enable generation to tie directly into the Project that is intended to serve both markets.

3. MATL states that it is incorporated under the laws of Alberta and Canada, and registered to conduct business in the state of Montana and the province of Alberta. MATL also notes that it is a special purpose entity owned in turn by three other entities: (1) LECTRIX Ltd., a majority owned subsidiary of LECTRIX LLC, which is a privately owned United States company in the business of identifying transmission constraints with significant commercial value and developing transmission projects that capture the value of relieving those constraints; (2) Rocky Mountain Power Ltd., a privately owned Alberta corporation in the business of developing wind power, co-generation and transmission

Commission to take actions necessary to implement and enforce non-discriminatory open access transmission lines required by the Secretary to provide such service. Nothing in this delegation shall allow the Commission to revoke, amend, or otherwise modify Presidential permits or electricity export authorizations issued by the Secretary.

³ MATL LLP FERC Electric Tariff, Original Vol. No. 1, Original Sheet Nos. 1-137.

⁴ The line would have 300 MW of capacity from North to South and 300 MW of capacity from South to North, for a total of 600 MW of capacity.

projects in Canada; and (3) Tonbridge Power Corporation, a private investment fund which provides equity to Canadian, provincial and municipal utilities and infrastructure projects in areas such as electricity, water, and sewage as well as waste management.

4. In its original application, MATL stated that it planned to conduct an open season for the allocation of transmission rights during the period February 3, 2005 through April 15, 2005, and that it would file a report with the results of the open season on May 16, 2005.

5. On May 16, 2005, MATL submitted its open season report to the Commission. The report noted that MATL accepted bids for 120 MW of South to North capacity from Great Plains Wind and Energy and for 200 MW of North to South capacity from GE Energy, Inc. and TransCanada Power.⁵ At that time, MATL also requested the Commission to defer further action on its application pending the submission of additional information.

6. On July 5, 2005, the Commission accepted the open season report for filing and found that the procedures employed by MATL, as described in the open season report, appeared to be transparent, fair and non-discriminatory.⁶ The Commission also stated that, per MATL's request, it would not act on MATL's application until its submission of additional information.

7. On March 31, 2006, MATL filed an amendment to its application that includes supplemental information concerning the Project, a revised request for authority to sell transmission rights, and a revised OATT. In its amended filing, MATL requests Commission action by May 30, 2006 in order for MATL to meet financing and construction milestones associated with the Project.

MATL's Application

8. As stated above, MATL proposes to develop a transmission line that would interconnect the State of Montana with Alberta, Canada. According to MATL, the line would be Alberta's first transmission interconnection with the U.S. and will provide up to 300 MW of transfer capacity in each direction.⁷ MATL states that the Project would

⁵ It appears that MATL has recently sold all remaining capacity on the Project to other wind generation through a subsequent open season. See Remaining Long-Term Capacity on U.S.-Alberta Line Sold Out, *Power Market Today* 1-2 (July 11, 2006).

⁶ *Montana Alberta Tie, Ltd.*, 112 FERC ¶ 61,018 (2005) (Open Season Order).

⁷ MATL states that consultant Asea Brown Boveri performed feasibility level transmission studies to investigate available transmission capacity between Lethbridge and other interconnection points, and concluded that up to 300 MW of transfer capacity
(continued...)

increase energy transmission between the U.S. and Alberta, Canada, allow markets on both sides of the international border to have efficient and economic access to existing and new generation sources such as wind farms, facilitate additional sources of generation and provide additional transmission routes during tight supply situations, and improve reliability in both countries.

9. MATL states that inter-system coordination of the synchronous interconnection is expected to enhance system reliability for transmission systems in both Montana and Alberta. MATL asserts that the Project would provide a range of benefits such as: (1) increased reliability and stability of the existing power grids; (2) enhanced inter-region import/export limits; (3) additional competition and options for the marketplace; (4) greater flexibility in scheduling generator maintenance, and (5) optimal allocation of generation resources.

10. MATL notes that, in Canada, the Project would be subject to regulation by the Alberta Energy and Utilities Board and Canada's National Energy Board. MATL states that it will file the necessary applications with these Canadian regulators for permits to construct and operate the facility. In addition, it anticipates that there would be coordination among the Montana Department of Environmental Quality, DOE, Canada's National Energy Board, the Alberta Energy and Utilities Board and the Alberta ESO to minimize the duplication of efforts associated with regulatory permits and approvals. According to MATL, it is working with each of these entities to finalize all necessary contracts and obtain all necessary approvals.

11. MATL states that it will be responsible for administering its proposed OATT. MATL adds that it will be the point of contact for customer service requests, issues and conflicts and that it will administer all credit requirements and will invoice all customers directly for transmission service provided. MATL submits that, if a customer files a complaint with the Commission, then the Commission will have jurisdiction over MATL to address the complaint.

12. MATL indicates that it intends to sign Coordinated Operating Agreements with NorthWestern Energy and/or the Alberta ESO.⁸ MATL maintains that the Coordinated Operating Agreements will be limited to coordination and operation issues, and will not

in each direction would be available with all transmission in service and that the line is technically feasible. MATL also states that it retained Asea Brown Boveri to carry out detailed power system studies (phase I studies) that indicate benefits to the transmission grids in both Alberta and Montana.

⁸ MATL states that the Coordinated Operating Agreements "will be filed with the Commission to the extent it concerns jurisdictional service provided by FERC-jurisdictional public utilities." *See* MATL's amended filing at 10.

include provisions of service that should be included in MATL's proposed OATT. MATL asserts that, at a minimum, the Coordinated Operating Agreement will address items such as: dispatch and scheduling; physical operation of the transmission line; phase shifting transformer and substations; transmission path coordination and protocol with the Alberta ESO and NorthWestern Energy; physical interfaces and jurisdiction for operations and maintenance; voltage regulation procedures; and posting of total transmission capacity and calculation of allowable transmission capacity.

13. MATL also states that it will enter into an Operating Agreement with one or more Montana-based transmission facility owners for the US-side of the Project. MATL submits that the Operating Agreement will document the roles and responsibilities for the safe and reliable operation of the transmission line and associated substation facilities, as well as set out the commercial terms for providing operations services. MATL states that specific areas of responsibility include: definitions of authority and roles; switching procedures; normal and emergency operations protocols; outage scheduling; and restoration of service procedures.

14. MATL contends that the Project is consistent with the Commission's policy and precedent with respect to innovative solutions for transmission expansion. MATL points to recent Commission decisions where the Commission stated that, in order to promote grid expansion, it would permit innovative transmission construction and pricing proposals.⁹ MATL contends that the Commission should grant it authority to sell transmission rights at market-based rates because its capacity sales and allocation processes will result in just and reasonable rates.

15. MATL points out that it is a transmission-only company with no generation assets, and that it is building a new transmission line. MATL also points out that it has no captive customers that began taking service during a different regulatory regime that must bid to retain existing service, and that it has no franchised service territory to protect.

16. In addition, MATL notes that its initial minimum rates for long-term capacity were established through an open season process that the Commission approved.¹⁰ Excess, unsold capacity remaining from the open season will be offered first to the long-term market through a further open season process. According to MATL, capacity that is

⁹ MATL cites to *TransEnergie U.S. Ltd.*, 91 FERC ¶ 61,230 (2000) (*TransEnergie*); *Neptune Regional Transmission System, LLC*, 96 FERC ¶ 61,147, *order on reh'g*, 96 FERC ¶ 61,326 (2001) (*Neptune*); *TransEnergie Ltd.*, 98 FERC ¶ 61,144 (2002); *TransEnergie Ltd. and Hydro One Delivery Services Inc.*, 98 FERC ¶ 61,147 (2002); *Northeast Utilities Services Co.*, 98 FERC ¶ 61,310 (2002) (*Northeast Utilities*); and *Conjunction LLC*, 103 FERC ¶ 61,198 (2005) (*Conjunction*).

¹⁰ See *supra* note 6.

unsold 120 days prior to the start of the calendar year would then be offered to the short-term market. Bids for transmission service having a term of a month would be accepted one month prior to the start of each calendar month. MATL states that capacity unsold for the closest month would then be offered up for weekly transmission service one week prior to the commencement of the calendar week. MATL also states that the same open season process would be followed for daily and hourly firm capacity. Each shorter-term Transmission Scheduling Right (TSR) would be “cleared” from longest duration to shortest duration. MATL proposes to have capacity auctions ongoing constantly, provided capacity has not already been taken up under longer duration contracts.

17. MATL states that its rates are set by the marketplace through competitive bid processes via MATL’s Open Access Same-Time Information System (OASIS). MATL avers that it will be a price taker in all capacity auctions, with capacity sold to the highest bidders, subject to those bidders meeting or exceeding certain minimum rates.

18. MATL notes that the Project’s customers would have the right to resell their TSRs on a bilateral basis or via MATL’s OASIS auction process and must report the transactions to MATL, which transactions would then be posted on MATL’s OASIS. All unscheduled capacity would be offered for sale via MATL’s OASIS.

19. According to MATL, each auction would be run as a blind bid. MATL states that all bids above the minimum prices established by MATL would be accepted up to the limit of capacity available on the MATL system for that term/product. MATL notes, further, that it will only remove bids for capacity posted on its OASIS when no qualifying bids are received within the designated time frame. All sellers of capacity, including MATL, would receive a price equal to the average of all the accepted bids for that term/product. Buyers of capacity would pay their bid prices.

20. MATL states it reserves the right to increase its short-term minimum rates to shift capacity from lower value market segments to higher value market segments. For example, if monthly TSRs are selling at \$2.00/MWh, and hourly TSRs are consistently selling at \$6/MWh, MATL states that it may increase the minimum price in the monthly market in order to transfer available transmission capacity from the monthly market to the hourly market.

21. According to MATL, prices for the Project’s capacity would be limited to the price differential between the power markets in Montana and Alberta. MATL notes that it is not a market participant in either market, and thus has no ability to influence prices in either market. MATL points out that the bidders for TSRs to the Project would be participants in the power markets at either end of the Project and likely at both ends.¹¹

¹¹ MATL notes elsewhere in its application that generation is expected to
(continued...)

MATL notes that generators tying into the Project directly would be active participants in either the Montana or the Alberta markets, or both, and thus would be aware of power prices in these markets. According to MATL, customers not directly connected to the Project must be participants in *both* the Alberta and Montana market since MATL does not have any load on its system that could be served by these customers. Thus, MATL concludes that all of its customers would be intimately aware of power prices in those two markets, which will permit them to determine if there are sufficient long-term or short-term opportunities to justify purchasing transmission capacity on the Project.

Notices and Interventions

22. Notice of MATL's original filing was published in the *Federal Register*, 70 Fed. Reg. 19,749 (2005), with interventions and protests due on or before April 22, 2005. Notice of MATL's amended filing was published in the *Federal Register*, 71 Fed. Reg. 20,081 (2006), with interventions and protests due on or before April 21, 2006. Powerex Corporation, Bonneville Power Administration and Transalta Energy Marketing (U.S.), Inc. filed timely motions to intervene.

Discussion

A. Procedural

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Authorization to Sell Transmission Rights

24. The Commission believes that merchant transmission projects, such as that proposed by MATL in this filing, can play a useful role in expanding competitive generation alternatives for customers and meeting reliability needs.¹² MATL is proposing an innovative merchant transmission project that will provide a link between two regions and allow for efficient and economic access to existing and new generation sources, such as newly developing wind farms. MATL's Project thus has the potential to provide benefits to electric customers and producers in both Canada and the United States without posing additional, unreasonable risks or costs. Moreover, MATL does not have a

interconnect to its line.

¹² See *Sea Breeze Pacific Juan de Fuca Cable, LP*, 112 FERC ¶ 61,295 at P 21 (2005) (*Sea Breeze*); *Neptune*, 96 FERC ¶ 61,147 at 61,633; *TransEnergie*, 91 FERC ¶ 61,230 at 61,838.

pre-existing transmission network and does not have a franchised service territory, and thus does not currently have any end-use captive customers. In addition, customers on the MATL line will be served on an open access and non-discriminatory basis. We conclude, therefore, that it is appropriate to authorize the sale of transmission rights as discussed below.

25. This order will allow MATL to commence construction and begin operation of the Project on April 1, 2007, as MATL plans. Below, we direct certain revisions and a compliance filing to address specific concerns, but we do not expect these changes to interfere with MATL's schedule.

C. Commission's Ten Criteria for Evaluating Merchant Transmission

26. The Commission has adopted ten criteria to evaluate merchant transmission proposals, which have generally been applied to proposals within organized RTO/ISO markets. These ten criteria are: (1) the merchant transmission facility must assume full market risk; (2) service should be provided under the 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) the merchant transmission facility should create tradable firm secondary transmission rights; (4) an open season process should be employed to initially allocate transmission rights; (5) results of the open season should be posted on the OASIS and filed in a report to the Commission; (6) affiliate concerns should be adequately addressed; (7) the merchant transmission facility should not be able to preclude access to essential facilities by competitors; (8) the merchant transmission facility should be subject to market monitoring for market power abuse; (9) physical energy flows on merchant transmission facilities should be coordinated with, and subject to, reliability requirements of the relevant ISO or RTO; and (10) the merchant transmission facility should not impair pre-existing property rights to use the transmission grids of inter-connected RTOs or utilities.¹³

27. MATL explains that the project generally satisfies the Commission's ten criteria for evaluating merchant transmission project proposals. However, MATL states that, to the extent necessary, it should be afforded the same flexibility that the Commission afforded in *Sea Breeze*. We agree with MATL that not all of the ten criteria are equally relevant to merchant transmission proposals that are not within or adjacent to organized RTO/ISO markets. However, since MATL addressed all ten criteria in its filing, we will as well in this order.

¹³ See *Northeast Utilities*, 98 FERC ¶ 61,310 at 62,326-30.

1. Assumption of Market Risk

28. The first criterion is that the merchant transmission facility should assume full market risk. MATL notes that the costs of the Project will be recovered only from customers purchasing transmission rights to the Project. MATL adds that the Project does not have captive customers, and all entities that become customers on the Project will do so of their own free will. MATL states that its books and records will comply with the Uniform System of Accounts in Part 101 of the Commission's regulations, and be subject to examination as required in Part 41 of the Commission's regulations.¹⁴ MATL adds that it will file financial statements and reports in accordance with Part 141 of the Commission's regulations¹⁵ and that its books and records will be audited by an independent auditor. Finally, MATL indicates that those who do not hold transmission rights to the Project would not be required to contribute to Project costs through mandatory grid use charges or "system benefits" charges.

29. We find that MATL satisfies this criterion, given its commitment to assume all financial risks for the Project, to follow the Uniform System of Accounts and be subject to not only Part 101 but also Parts 41 and 141, and to recover Project costs only from those customers buying transmission rights.

2. Open-Access Transmission Tariff

30. 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. MATL notes that there is no operational ISO/RTO and therefore no corresponding OATT, in Montana or the Pacific Northwest region. Despite this fact, MATL argues that its application still satisfies the Commission's OATT/RTO requirement for merchant transmission projects. First, it submits that operational "authority" over the Project will be delegated to the Alberta ESO and/or NorthWestern Energy through Coordinated Operating Agreements.¹⁶ Second, MATL argues that the OATT submitted with its application adheres to the requirements of Order No. 888 in that it provides for non-discriminatory, open-access to the Project for all eligible customers. Third, MATL asserts that it commits to making a filing with the Commission addressing whether it is appropriate for MATL to join or participate in an

¹⁴ 18 C.F.R. Parts 101, 41 (2005).

¹⁵ 18 C.F.R. Part 141 (2005).

¹⁶ We note that in other places in MATL's application, it appears that MATL itself will control the line. *See, e.g.*, MATL amended filing at 9: "[MATL] will be the point of contact for customer service requests, issues and conflicts."

RTO should such an entity be organized and approved by the Commission. To the extent necessary, MATL also requests it be afforded the same treatment as afforded in *Sea Breeze* where the Commission did not require operational control to be transferred to a Commission-approved RTO.¹⁷

31. As indicated in footnote 16 and the accompanying text, it is unclear from MATL's filing whether it intends to hand operational control over the Project to NorthWestern Energy and/or the Alberta ESO through the Coordinated Operating Agreements and Operating Agreements described in paragraphs 12 and 13 above. Nor is it clear whether the Coordinating Operating Agreements are for coordination of operation among MATL, NorthWestern Energy and the Alberta ESO, or for NorthWestern Energy and the Alberta ESO to operate the Project, or both. To clarify these matters, we direct that the Coordinated Operating Agreements and Operating Agreements be filed within 60 days of their execution. We will assume that presently operational control, or 'authority' over the line is retained by MATL. To the extent that MATL proposes to transfer control over the Project to a third party, MATL must file the relevant agreement with the Commission pursuant to section 205 of the FPA.

32. In *Sea Breeze*, we acknowledged that we are open to reconsidering the ten criteria. We noted that the ten criteria have been applied to merchant transmission facilities on a case-by-case basis, and that the Commission authorized the transfer of control to an ISO or RTO in previous orders based on the fact that the projects were located in a region with functional ISOs and RTOs.¹⁸ In *Sea Breeze*, we waived this criterion because the Commission found the proposed merchant transmission facility at issue there unique in that it would interconnect two entities not subject to the Commission's jurisdiction under sections 205 and 206 of the Federal Power Act. In MATL's case, again there is no functional ISO or RTO to which control may be transferred and no corresponding ISO or RTO OATT under which service may be provided. Accordingly, as suggested in *Sea Breeze*, we find that this criterion is not relevant in circumstances such as here, where the merchant transmission facility is not being built within or adjacent to an ISO or RTO. Nonetheless, we also find that MATL's OATT must comply with Order No. 888, as discussed more fully in the following section on MATL's OATT.

3. Secondary Transmission Rights

33. The third criterion is that the merchant transmission facility should create tradable firm secondary transmission rights and these rights should be posted on an OASIS. MATL states that, under section 13.1 of its proposed OATT, TSRs may be resold and purchased without restriction, provided that the sale of those TSRs does not relieve the

¹⁷ *Sea Breeze*, 112 FERC ¶ 61,295 at P 22.

¹⁸ *Sea Breeze*, 112 FERC ¶ 61,295 at P 17 and 21.

transmission customer of its obligations to MATL. Section 13.2 of MATL's OATT provides that MATL will facilitate the process of matching sellers and buyers for TSRs through its OASIS. MATL adds that it has contracted with Open Access Technology International, Inc. for the provision of an OASIS as required under Part 37 of the Commission's regulations.¹⁹

34. Given that MATL's OATT provides for tradable firm secondary transmission rights and that the secondary transmission rights will be publicly posted, we find that MATL satisfies this criterion.

4. Open Season

35. The fourth criterion is that an open season process be employed to initially allocate transmission rights and the parameters of the open season process should be non-discriminatory, fair and transparent. On May 16, 2005, MATL submitted an open season report describing the open season process that it used to auction over half of the total available transmission capacity on the Project. The Commission's Open Season Order accepted this open season report, finding that the procedures employed by MATL appear to be transparent, fair and non-discriminatory.²⁰

36. Section 12.2.1 of MATL's OATT describes how any subsequent long-term capacity auctions would be administered.²¹ This section states that, upon receipt of a request for long-term capacity, MATL will post the request on its OASIS for a period of 30 calendar days and announce the request in widely circulated newspapers. If additional requests for long-term transmission service are received and available transmission capacity is greater than the sum of all transmission requests received during the public notice period, then available transmission capacity will be awarded. If available transmission capacity is less than the sum of all requests for long-term transmission service, a capacity auction will be held in which all requesting parties shall be given an opportunity to submit competing bids for long-term transmission service via MATL's OASIS. Long-term transmission service will then be awarded to those bids with the highest gross revenue present value until available transmission capacity is equal to zero.

37. We find that MATL satisfies this criterion. The Open Season Order found that MATL's initial open season employed procedures that appeared to be transparent, fair and non-discriminatory. We therefore only address any open season(s) for the remaining

¹⁹ 18 C.F.R. Part 37 (2005).

²⁰ *See supra* note 6.

²¹ MATL's OATT defines long-term transmission service as transmission service having a duration of one year or greater.

transmission rights on the line. As noted in *Northeast Utilities*, the Commission's concern in evaluating the open season process is to provide transparency in the bidding process and to enable unsuccessful bidders to determine if they were treated in a fair manner.²² We find that MATL's use of the OASIS to auction remaining long-term capacity, its commitment to publicly announce any requests for additional service, and its bid evaluation based on highest gross revenue present value satisfactorily address this concern.

5. Report on Open Season

38. The fifth criterion is that results of the open season be posted on OASIS and filed in a report to the Commission. As noted above, MATL filed a report on its initial open season with the Commission on May 16, 2005. Section 12.1.2 of MATL's OATT states that information regarding each winning bidder will be posted on its website or OASIS, including the winning bidder's name, quantity and expiration date of TSRs awarded, and contact information for purposes of taking inquires regarding TSR resales. Section 12.2.1 of MATL's OATT states that the results of subsequent long-term capacity auctions will be posted on MATL's OASIS within five business days following the close of the capacity auction.²³

39. We find that MATL satisfies this criterion, subject to the requirement that MATL file with the Commission reports on any subsequent open seasons.

6. Affiliate Concerns

40. The sixth criterion is that affiliate concerns be adequately addressed. MATL states that no MATL affiliates will be permitted to participate in an open season for primary transmission rights. MATL adds that none of the transmission systems to which the Project will be interconnecting are owned by MATL affiliates. MATL also states that it will comply with all of the Commission's applicable reporting requirements. It further commits to comply with Part 37 of the Commission's regulations,²⁴ including the

²² *Northeast Utilities*, 98 FERC ¶ 61,310 at 62,329.

²³ Section 12.2.2 of MATL's OATT states that an initial short-term capacity auction will be held via MATL's OASIS 120 days prior to the Project in-service date, and that clearing of the initial short-term capacity auction will occur 60 days prior to the Project in-service date. Following this initial auction, the short-term capacity auction will be cleared every day via MATL's OASIS.

²⁴ 18 C.F.R. Part 37 (2005).

Standards of Conduct adopted in Order No. 2004,²⁵ and to file the same type of quarterly reports of its transactions as required of power marketers and transmission providers. MATL submits that similar restrictions and commitments in *Northeast Utilities*²⁶ satisfied this criterion.

41. We find that MATL satisfies this criterion. Given MATL's reporting requirements and its commitments to comply with the Standards of Conduct and to file quarterly transaction reports, and the fact that MATL's affiliates will not participate in any open seasons and do not own the interconnecting transmission systems, the Commission finds that affiliate concerns have been adequately addressed.

7. Access to Essential Facilities

42. The seventh criterion is that the merchant transmission facility does not preclude access to essential facilities by competitors. MATL states that none of the transmission systems to which the Project will be interconnecting are owned by MATL affiliates. MATL adds that, in fact, none of MATL's affiliates own any transmission facilities in the United States or Canada.

43. We find that MATL satisfies this criterion, subject to the compliance filing ordered below. In *Northeast Utilities*,²⁷ the Commission found that one way to evaluate this criterion was to examine whether non-affiliated entities are able to readily connect new transmission facilities to the Project. As discussed above, control of other merchant transmission projects was generally turned over to an RTO, which would oversee interconnection requests. We note that MATL's OATT indicates that transmission interconnection will be handled pursuant to the Generation Interconnection Agreement included as part of the MATL OATT. As part of its compliance filing discussed below in the OATT section, MATL must conform its proposed OATT, including its transmission interconnection procedures, to the *pro forma* OATT unless it can justify any differences.

²⁵ *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161 (2004), *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166 (2004), *order on reh'g*, Order No. 2004-C, 109 FERC ¶ 61,325 (2004), *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *appeal pending sub nom. National Fuel Gas Supply Corp. v. FERC*, No. 04-1183 *et al.* (D.C. Cir. June 17, 2004).

²⁶ *Northeast Utilities*, 98 FERC ¶ 61,310 at 62,329.

²⁷ *Id.*

8. Market Monitoring

44. The eighth criterion is that the merchant transmission facility should be subject to market monitoring for market power abuse, and all data requests from an authorized market monitor should be answered. MATL notes that the Project will be subject to the jurisdiction of the Market Surveillance Administrator, an Alberta governmental organization, entirely independent of the Alberta ESO, and thus will be subject to and required to comply with data requests from the Market Surveillance Administrator.²⁸ To the extent necessary, MATL also requests that the Commission afford MATL the same treatment afforded in *Sea Breeze* where no market monitor was required.²⁹

45. Since there is not an organized market to monitor here, consistent with *Sea Breeze*, we find that this criterion is not relevant here. Accordingly, we will not require a market monitor for the Project.

9. Reliability Requirements

46. The ninth criterion 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. MATL states that this criterion is satisfied by the fact that MATL is entering into agreements with neighboring systems (NorthWestern Energy and the Alberta ESO) to coordinate power flows and operations of the various systems. MATL adds that the entities with scheduling and operational “authority” over the Project will have the responsibility to ensure that Project reliability requirements are met when scheduling and managing flows on the Project.

47. Although it appears that MATL will be operator of the line,³⁰ we note that MATL has not yet executed Coordinated Operating Agreements and Operating Agreements that will outline responsibility for reliability of the Project. For purposes of the authorizations granted herein, we assume that MATL will be the operator of the line and thus that it will be responsible for reliability. Accordingly, based on this understanding of MATL’s

²⁸ MATL states that the Market Surveillance Administrator was established under Canadian statute with a mandate of surveillance and investigation to ensure a fair, efficient, and openly competitive market.

²⁹ See *Sea Breeze*, 112 FERC ¶ 61,295 at P 22.

³⁰ As previously noted, we assume that at the outset MATL will have operational control over the line.

representations, we find that MATL has met this criterion subject to MATL filing the agreements with the Commission and our finding that the terms of the agreements meet this criterion.

10. Pre-existing Property Rights

48. The last criterion is that the merchant transmission facility should not impair pre-existing property rights to use the transmission grid or interconnected utilities. MATL states that rights for transmission service are for point-to-point service, from one end of the Project to the other. The transmission rights to the Project are limited and do not extend beyond the Project.

49. We find that MATL satisfies this criterion by the fact that MATL commits to working with NorthWestern Energy and the Alberta ESO through the Coordinated Operating Agreements. Additionally, we note that MATL does not have an existing grid of its own for which existing rights could be impeded and that the owners of the transmission systems connected to MATL do not oppose the Project or claim it will impede either the operation of their systems or property rights on their systems. We further find that any concerns posed by the fact that the Project is a synchronous transmission line should be mitigated by the fact that MATL intends to install a phase shifting transformer to control flows over the Project.

D. Rate Authority

50. In *TransEnergie*, the Commission first approved negotiated rate authority for a merchant transmission line. The *TransEnergie* order quoted the merchant transmission applicant as explaining that the proposed transmission facility would provide service at negotiated rates reflecting location-differential prices between two RTOs. That is to say, the price customers would pay for transmission service over the merchant transmission line would be disciplined by the difference in generation prices at each end of the transmission line. These customers would not pay more than the difference in the location-based marginal prices (LMP) found in the two RTO markets that the merchant line connects. In accepting the filing, the Commission concluded that that pricing proposal for a merchant transmission line helped ensure just and reasonable transmission rates.³¹

51. The *TransEnergie* order also noted that a location-differential price is an opportunity cost equal to either the generation savings of the power customers served by the merchant line, or the savings provided by customers' other alternatives, *e.g.*, new generation. The Commission concluded that the pricing proposal in *TransEnergie* thus

³¹ *TransEnergie*, 91 FERC ¶ 61,230 at 61,838-39.

represented a form of opportunity cost pricing. Opportunity costs would be capped at the cost of expanding the transmission system, given the obligation of the RTOs in New York and New England to expand transmission at cost-based rates to meet new requests for transmission service.³²

52. In summary, the Commission found in *TransEnergie* that negotiated rate authority could be granted to a merchant transmission facility interconnected with an RTO given the cap effectively created by the difference in LMP prices on each end of the merchant line and the expansion cost cap.

53. Here, we are able to reach a similar result for different reasons. We find that MATL's initial rates for transmission capacity before the Project is built are just and reasonable. We find that MATL's open season commitment, which we accept (see section 4 above), will help protect against physical and economic withholding. MATL also commits to being a price taker (subject to a floor that is defined by the current auction price), and will run each auction as a blind bid. We believe that these commitments will result in transmission rights being auctioned in an open, fair and transparent manner at a price approximating the current cost of construction, cost of operation and cost of capital.

54. With regard to MATL's rates for transmission capacity going forward, we find that these rates will be constrained by the fact that Northwestern Energy has an obligation under its OATT, upon request, to expand transmission capacity at cost-based rates in or near the area that will be served by MATL. Under these circumstances, MATL's customers are likely to pay prices that are no higher than, and probably lower than, Northwestern Energy's cost of expansion. Customers will be protected by the availability of services at cost-based rates from Northwestern Energy. This backstop will, in effect, limit the price at which customers are willing to buy services from MATL. This approach is the same as we took initially in authorizing market-based rates for certain sellers of ancillary services, relying on the cost-based rates of transmission providers to constrain the prices charged by competing sellers.³³ In granting MATL's requested pricing, we also note that no customers or competitors have complained about this pricing proposal, and MATL has no existing, captive end-use customers.

³² *Id.*

³³ *Avista Corporation*, 87 FERC ¶ 61,223, *order on reh'g*, 89 FERC ¶ 61,136 (1999).

E. MATL's OATT

55. According to MATL, its proposed OATT complies with Order No. 888's *pro forma* OATT and provides for non-discriminatory open access to the Project by all eligible customers. MATL contends that, because it is a merchant transmission owner, it must be allowed certain deviations. MATL states that: (1) it will recover its costs plus a return from the marketplace, not captive customers, and it has no assurance that it will recover its costs, or a return; (2) the Project is driven by market forces and it must offer different services and products than those set forth in the *pro forma* OATT; and (3) allocation of the capacity will be based upon competitively priced bids that provide the market signal for further investments.

56. MATL states that its proposed OATT reflects the following: (1) its proposed OATT does not contain provisions for network service (Part II of the *pro forma* OATT) because the Project is a single line and MATL cannot provide network service; (2) section 3 and schedules 1 through 6 of the *pro forma* OATT have been deleted because ancillary services are not required for access to the Project and the transmission customer may obtain ancillary services from the systems interconnected with the Project in accordance with the tariffs of those systems; (3) MATL will offer different types of transmission service than those contemplated under the *pro forma* OATT; (4) because it is offering different types of transmission service than those set forth in the *pro forma* OATT, its curtailment and interruption hierarchy is different from the *pro forma* OATT; (5) MATL has contracted for OASIS as required under Part 37 of the Commission's regulations; (6) it will facilitate the process of matching sellers and buyers for the resale of transmission service rights in the secondary market by maintaining a valid OASIS site; (7) MATL will not have an obligation to expand its system to accommodate new customers and generator interconnections because the ratepayers are not undertaking the obligation and risk of funding the Project; (8) MATL's proposed OATT incorporates the Commission's form of large generator interconnection agreement from Order No. 2003; (9) the proposed OATT provides procedures for arranging transmission service; (10) all customers will be required to sign a transmission service agreement; (11) available transmission capacity will be determined by the Alberta ESO or NorthWestern Energy; (12) the price for capacity will be set through auction, subject to minimum floor prices; and (13) section 5 of the *pro forma* OATT (Local Furnishing Bonds) is not applicable because this section concerns transmission providers that own facilities financed by local furnishing bonds and MATL does not own any facilities financed by local furnishing bonds.

57. On this basis, given the different business model and the unique layout and resulting different services offered, we agree that the certain differences from the *pro forma* OATT should be allowed. Accordingly, we conditionally accept and suspend MATL's proposed OATT, and make it effective May 30, 2006, as requested, subject to refund and to the compliance filing discussed below.

58. Our review of MATL's proposed OATT indicates that the proposed deletion of the provisions for network service, ancillary services and local furnishing bonds is acceptable. MATL argues that these provisions are not applicable, and we agree.

59. On the other hand, we note that MATL has not justified certain other proposed deviations as consistent with or superior to the *pro forma* OATT. As an illustrative example, section 7.2 of the *pro forma* OATT states that interest on any unpaid amounts will be calculated pursuant to 18 C.F.R. § 35.19a(a)(2)(iii). MATL modified the language to state that interest on unpaid balances will be calculated based on the Bank of Montreal's prime lending rate plus five percent. MATL provided no justification for this revision. We also note that there are instances where MATL made substantial revisions and simply stated that they are consistent with the *pro forma* OATT, or said nothing at all. As an illustrative example, MATL excluded the *pro forma* Large Generator Interconnection Procedures and added over 50 new terms and definitions without providing any discussion at all.

60. While the provisions in MATL's OATT may provide a comparable level of customer protection as the *pro forma* OATT, we find that MATL has not adequately justified its provisions besides those related to network service, ancillary services, and local furnishing bonds. Accordingly, the Commission directs MATL to file, within 30 days of the date of this order, a compliance filing making revisions, consistent with the *pro forma* OATT, or clarifying and demonstrating that the deviations in MATL's proposed OATT are consistent with or superior to the *pro forma* OATT, or fully explaining how the *pro forma* provisions are not applicable given MATL's business model.³⁴

F. Requests for Waivers and Blanket Approvals

61. MATL requests the following waivers and blanket authorizations: (1) waiver of Part 35 in order to permit the filing to become effective as proposed; (2) waiver of the filing requirements in Subparts B and C of Part 35 of the Commission's regulations, except for sections 35.13(a), 35.13(b), 35.15, and 35.16; (3) waiver of Part 45 of the Commission's regulations regarding interlocking directorates; (4) blanket authorization

³⁴ The Commission has recently proposed to modify the *pro forma* OATT and MATL will need to conform its OATT to the requirements of any final rule in that proceeding. See *Preventing Undue Discrimination and Preference in Transmission Service*, Notice of Proposed Rulemaking, 115 FERC ¶ 61,211 (2006).

for the issuance of securities or assumption of liabilities under section 204 of the FPA and Part 34 of the Commission's regulations; and (5) waiver of the Form No. 1, Annual Report of Major Electric Utilities, Licensee and Other, filing requirement.³⁵

62. In its amended application, MATL requests Commission action on this filing on or before May 30, 2006 in order for MATL to meet financing and construction milestones to continue the Project's development. MATL, therefore, requests waiver of Part 35 in order to permit the filing to become effective as proposed.

63. Section 35.3(b) of the Commission's regulations provides that the Commission, upon request, may permit a rate schedule that is predicated on the construction of facilities to be filed and posted more than 120 days in advance of the date set by the parties for the contract to go into effect.³⁶ We note that, while MATL is requesting a nominal May 30, 2006 effective date, the in-service date for the Project, and thus the date for transmission service over the Project, is April 1, 2007. We note further that, in order to meet the October 1, 2006 commencement of construction date for the Project, debt financing for the Project must be completed on or about June 1, 2006. We also note that MATL must make progress payments for the phase shifting transformer and place steel pole orders for the Project by the end of June 2006. In this case, therefore, the Commission finds good cause to grant MATL's request for waiver of the 120-day advance notice requirement for its proposed rate schedules.

64. Consistent with our rulings in other merchant transmission proceedings, we will grant the request for waiver of the regulations pertaining to rate filings because MATL will provide service at non-cost-based, negotiated rates.³⁷

65. The Commission denies MATL's requests for waiver and blanket approval concerning interlocks³⁸ and issuance of securities and assumption of liabilities because:

³⁵ On September 1, 2005, the Commission issued a notice of proposed rulemaking addressing reliability. *See 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 MATL will meet the reliability standards enumerated in the final rule in that proceeding.

³⁶ *See* 18 C.F.R. § 35.3(b) (2005).

³⁷ *See Ameren Energy Generating Co.*, 93 FERC ¶ 61,024 at 61,046-47 (2000), *reh'g denied*, 95 FERC ¶ 61,009 (2001).

³⁸ The Commission no longer grants Part 45 waivers to entities making wholesale sales at market-based rates. *See Commission Authorization to Hold Interlocking Positions*, Order No. 664, FERC Stats. & Regs. ¶ 31,194 at P 34 (2005) (“[W]e intend to no longer grant waivers of the full requirements of [P]art 45 in our orders granting
(continued...)”)

(1) compliance with these requirements is required by the FPA and our regulations; (2) MATL 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.³⁹

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

The Commission orders:

(A) MATL is hereby conditionally granted authority to sell transmission rights at negotiated rates.

(B) MATL is hereby directed to file any Coordinated Operating Agreements and Operating Agreements within 60 days of the agreement's execution.

(C) MATL's proposed OATT is hereby conditionally accepted for filing and suspended for a nominal period, to become effective on May 30, 2006, as requested, subject to refund and the compliance filing directed in Ordering Paragraph (F), as discussed in the body of this order.

(D) The Commission grants MATL'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. The Commission also grants waiver of the 120-day advance notice provision in section 35.3(b) of the Commission's regulations, as discussed in the body of this order.

market-based rate authority. Rather, persons seeking to hold interlocking positions will be required henceforth to comply with the full requirements of [P]art 45.”).

³⁹ See, e.g., *TransEnergie*, 98 FERC ¶ 61,144 at 61,457; *TransEnergie*, 98 FERC ¶ 61,147 at 61,502; *Conjunction*, 103 FERC ¶ 61,198 at P 26-27.

(E) The Commission denies MATL's requests for authorization to make abbreviated filings under Part 45 and for blanket authorization under Part 34 of the Commission's regulations, as discussed in the body of this order.

(F) The Commission grants MATL's request for waiver of the Form No. 1 filing requirement, as discussed in the body of this order.

(G) MATL is hereby directed to file within 30 days of the date of this order the relevant *pro forma* OATT provisions, or in the alternative, explanations why any deviations are consistent with or superior to the *pro forma* OATT, or fully explain how the *pro forma* provisions are not applicable given MATL's business model, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.