

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Conjunction LLC

Docket Nos. ER03-452-002 and
ER03-452-003

ORDER ON SCOPE OF NEGOTIATED RATE AUTHORITY

(Issued July 29, 2004)

1. In this order, the Commission grants Conjunction LLC's (Conjunction) motion concerning the scope of its previously-granted merchant transmission negotiated rate authority, and finds that Conjunction's proposal to participate in a request for proposals (RFP) issued by the New York Power Authority (NYPA) is a non-discriminatory, fair and transparent means of allocating transmission capacity. In addition, the Commission accepts Conjunction's informational filing describing its efforts during its earlier auction/open season. This order benefits customers by promoting competition in New York City by clarifying that Conjunction may participate in the NYPA RFP.

Background

2. In an order issued on May 21, 2003, the Commission approved Conjunction's application to sell transmission rights for the Empire Connection (EC) merchant transmission project, a yet-to-be-formed subsidiary of Conjunction, at negotiated rates under the merchant transmission framework.¹ The Commission also found that Conjunction's proposed four-stage open-season process for the allocation of transmission rights on the EC project was "transparent, non-discriminatory and fair."²

¹ Conjunction LLC, 103 FERC ¶ 61,198 (2003) (May 21 Order).

² *Id.* at P 16.

Report on the EC Open Season

3. In its Report and Observations on the Open Season (Report) filed on March 24, 2004 in Docket No. ER03-452-002, Conjunction reports that, despite its best efforts, the capacity auction it held during its first open season “did not result in an opportunity to execute contracts sufficient to justify construction of the project.”³ Conjunction explains that after holding an open season offering 20 blocks of 25 MW of transmission capacity rights, totaling approximately 500 MW of capacity, EC did not enter any contracts for transmission rights.⁴ Conjunction contends that its open season was flexible in design, where bidders could specify the number of 25 MW blocks they wanted up to 500 MW of capacity. Conjunction further states that the auction was broad-based and included contacting many possible potential bidders in December 2003, hosting four meetings on the open season over a three-month period, and scheduling a realistic deadline of February 27, 2004. Conjunction states that, out of the possible 15-20 major investors/customers that showed some level of interest, only one submitted a bid; that bidder, however, did not request sufficient capacity to justify constructing the EC project.

4. The Report also notes that the results of the open-season auction “suggest that no matter how attractive a transmission project may be, and no matter how flexibly an auction or capacity contract is structured, a merchant transmission arrangement faces great challenges in the present regulatory and economic environment.”⁵ Conjunction states that, given that merchant transmission projects such as the EC project are uniquely dependent on long-term commitments to get started and given the failure of the open season, it is re-examining all of its business and regulatory options.⁶

NYPA Request for Proposals

5. Subsequently, on June 4, 2004, NYPA issued an RFP on behalf of the government of New York City, seeking 500 MW of in-city generation capacity or a combination of generation and transmission capacity. The RFP is soliciting a wide variety of proposals from power plants, new sources of energy, renewable sources and/or new transmission lines. Bids are due by August 18, 2004.

³ Report at 1.

⁴ *Id.* at 3-4.

⁵ *Id.* at 5.

⁶ *Id.* at 6.

Motion

6. On June 9, 2004, Conjunction filed a Motion to Determine the Scope of Negotiated Rate Authority in Docket No. ER03-452-003 (Motion). In its Motion, Conjunction states that it proposes to “vigorously” participate in the NYPA RFP process. Conjunction therefore requests that the Commission explicitly determine that the scope of its previously-granted negotiated rate authority⁷ would permit participation in the NYPA RFP process.

7. In support of its Motion, Conjunction states that its open-season/auction process did not work. While it states that it is not asking the Commission to abandon the open-season approach, Conjunction concludes that merchant generation and transmission facilities cannot be built without “substantial customer commitments up front,” and it cannot, at this time, rely entirely on auctions and standard contracts.⁸ Conjunction therefore asks the Commission to adapt its requirements to changing conditions.⁹

8. Conjunction explains that it intends to respond to the RFP jointly with one or more generators.¹⁰ Conjunction further notes that the NYPA RFP presents a vital commercial opportunity and that it intends to vigorously compete for the NYPA contract as it is an excellent opportunity for the EC project.¹¹ Conjunction states that, if it is awarded the NYPA contract, it will seek financing of the first 1000 MW circuit of the EC project based on NYPA’s commitment. Conjunction also states that it intends to build more capacity than the NYPA RFP requires, and that it proposes to sell that additional capacity to future purchasers pursuant to the Commission’s policies of open, fair, and transparent allocation of capacity.

9. Conjunction seeks Commission assurance that its approach and activities are consistent with and permissible pursuant to the May 21 Order, *i.e.*, that they are within the scope of its previously-granted negotiated rate authority. Conjunction seeks this assurance so that it may respond to the RFP and that, if successful, it may accept the NYPA contract.

⁷ March 21 Order at P 1.

⁸ Motion at 5.

⁹ *Id.* at 6, *citing* Certification of New Interstate Natural Gas Pipeline Facilities, Statement of Policy, 88 FERC ¶ 61,227 at 61,744 (1999).

¹⁰ This order does not address any of the authorizations that any such generators may need.

¹¹ Motion at 6.

Notice of Filings and Responsive Pleadings

10. Notice of the filing in Docket No. ER03-452-002 was published in the *Federal Register*, 69 Fed. Reg. 18,068 (2004), with interventions and protests due on or before April 14, 2004. On April 14, 2004, the City of New York filed a motion to intervene.

11. Notice of the filing in Docket No. ER03-452-003 was published in the *Federal Register*, 69 Fed. Reg. 35,339 (2004), with interventions and protests due on or before June 23, 2004. None were filed.

Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motion to intervene serves to make the City of New York a party to this proceeding.

B. Commission Analysis

13. The open-season criteria for merchant transmission projects were established to provide a non-discriminatory, fair and transparent means of allocating transmission capacity.¹² The NYPA RFP is a broad-based solicitation designed to increase power options in New York City. This RFP process by a government entity has no potential for affiliate abuse and is designed to be non-discriminatory, fair and transparent. We find that the NYPA RFP and Conjunction's proposal to use the NYPA RFP to allocate up to 500 MW of capacity on the EC project are consistent with our open-season criteria for merchant transmission projects.¹³

14. We note that, in an order issued contemporaneously with the May 21 Order, we indicated that, while we were not prepared to abandon our policy on open seasons, we were willing to consider options other than open seasons for the initial allocation of transmission rights.¹⁴ We find that the use of a broad-based, open RFP, such as NYPA's, is an appropriate opportunity for Conjunction to consider such other options.¹⁵

¹² Northeast Utilities Service Company, 98 FERC ¶ 61,310 at 62,328 (2002).

¹³ Northeast Utilities Service Company, 97 FERC ¶ 61,026 at 61,075 (2001).

¹⁴ See Neptune Regional Transmission System, LLC, 103 FERC ¶ 61,213 at P18 (Neptune).

¹⁵ Further, we invite participants in merchant transmission projects to continue to explore other innovative methods to allocate transmission capacity in a non-discriminatory, fair and transparent manner.

15. In sum, we conclude that Conjunction's seeking to respond to the NYPA RFP and accepting a contract should it be successful, as described in its filing, is consistent with and permissible pursuant to our May 21 Order, *i.e.*, is within the scope of its previously-granted negotiated rate authority.

16. Regarding Conjunction's intent to sell any additional capacity to future purchasers, the Commission reminds Conjunction that it must file its protocols for allocating this additional transmission capacity with the Commission in advance of its open season. The protocols may be filed as a report.¹⁶ In addition, the protocols must be posted on an appropriate Open Access Same-Time Information System (OASIS).

17. The Commission also accepts Conjunction's Report on EC's open season.

The Commission orders:

(A) Conjunction's motion on the scope of its negotiated rate authority is hereby granted and it may so respond to the NYPA RFP, as discussed in the body of this order.

(B) Conjunction's Report is hereby accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

¹⁶ In its March 24 Report, Conjunction notes that, in response to "rapidly changing market demands," it modified the protocols used for its open-season auction. In the future, such modifications should be reported to the Commission in advance.