

170 FERC ¶ 61,297
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

MATL LLP
BHE U.S. Transmission, LLC

Docket No. ER20-935-000

ORDER GRANTING APPLICATION FOR AUTHORIZATION TO CHARGE
NEGOTIATED RATES, SUBJECT TO CONDITION

(Issued March 31, 2020)

1. On January 31, 2020, MATL LLP (MATL) and BHE U.S. Transmission, LLC (BHE Transmission) (collectively, Applicants) submitted a request for Commission authorization for MATL to continue to sell transmission capacity on its merchant transmission facility at negotiated rates following the completion of a transaction under which BHE Transmission will become the new owner of MATL. In this order, we grant MATL's request to sell transmission capacity on the project at negotiated rates under its new upstream ownership, as requested, subject to its submission of post-allocation compliance filings.

I. Background

A. The Applicants and Project Description

2. The Applicants state that MATL (along with Montana Alberta Tie Ltd.), developed, built, and operates a 215-mile, 230 kV bidirectional AC transmission line, with a rated capacity of 300 MW, extending from Lethbridge, Alberta, Canada to Great Falls, Montana (Project).¹ The Applicants explain that MATL is a limited liability partnership organized under the laws of the State of Montana, and is an indirect, wholly owned subsidiary of Enbridge Transmission Holdings (U.S.) LLC (Enbridge Holdings),

¹ Specifically, the Applicants explain that Montana Alberta Tie US Holdings GP, Inc. owns all of the general partnership interests in MATL, and Montana Alberta Tie LP Inc. owns all of the limited partnership interests in MATL; both these entities are indirect, wholly-owned subsidiaries of Enbridge. Transmittal at 2-3.

which is an indirect, wholly owned subsidiary of Enbridge Inc (Enbridge). The Applicants note that Montana Alberta Tie Ltd. is also a wholly owned subsidiary of Enbridge Holdings.²

3. The Applicants state that BHE Transmission is a Delaware limited liability company and a direct, wholly owned subsidiary of Berkshire Hathaway Energy Company (BHE).³ The Applicants explain that BHE Transmission is affiliated with various entities in the energy sector in multiple regions of the country,⁴ including being part of several joint ventures to pursue development and ownership of transmission facilities.

4. The Applicants explain that, within the footprint of California Independent System Operator (CAISO), BHE Transmission and Pinnacle West Capital Corporation together indirectly own TransCanyon, LLC, whose subsidiaries were formed to provide bids into CAISO's competitive transmission solicitation process. They further explain that BHE Transmission wholly owns MidAmerican Central California Transco, LLC, which was formed to partially own a transmission line within the Pacific Gas and Electric Company footprint, although the line was cancelled and never built.⁵

5. The Applicants state that, within the footprints of Electric Reliability Council of Texas (ERCOT) and Southwest Power Pool, Inc. (SPP), BHE Transmission is affiliated with American Electric Power Company, Inc. (AEP). In addition, they explain that together BHE Transmission and AEP indirectly own Electric Transmission Texas, LLC, which owns and operates electric transmission assets in ERCOT,⁶ and BHE Transmission and AEP (together with Evergy, Inc.) own Prairie Wind Transmission, LLC, which owns a 108-mile 345 kV transmission line in Southern Kansas that is under the operational control of SPP.⁷

6. The Applicants state that BHE Transmission also owns Kanstar Transmission, LLC and Midwest Power Transmission Arkansas, LLC, which have both submitted bids into the competitive transmission solicitation processes of SPP and Midcontinent

² Transmittal at 3.

³ *Id.*

⁴ *Id.* at 3-6 and Appendix A.

⁵ *Id.* at 5.

⁶ *Id.* at 3-4.

⁷ *Id.* at 4-5.

Independent System Operator, Inc., though neither owns transmission facilities, nor has had bids accepted.⁸

7. With respect to these affiliations, the Applicants state that BHE Transmission has no generation or transmission affiliates that are interconnected to the Project. They explain that PacifiCorp, a subsidiary of BHE, is their only affiliate which owns generation or transmission facilities in the same balancing authority area (BAA) as the MATL Project, which operates in the NorthWestern Energy (NorthWestern) BAA. They note that PacifiCorp owns a 10% interest in Units 3 and 4 of the Colstrip generating facility and the corresponding 10% interest in the Colstrip Line, a 500 kV transmission line which is operated by NorthWestern in the NorthWestern BAA, that interconnects Colstrip Units 3 and 4 to the NorthWestern and Bonneville Power Administration transmission systems.⁹

B. Application

8. The Applicants explain that MATL operates its Project as a merchant transmission line pursuant to its Commission-approved Open Access Transmission Tariff (OATT) and has authority to sell transmission services over the Project at negotiated rates.¹⁰ According to the Applicants, the Commission initially granted MATL negotiated rate authority for the sale of transmission service on the Project in 2006.¹¹ Subsequently, upon Enbridge becoming an owner of MATL, in 2011, the Commission authorized MATL to sell transmission service on the Project at negotiated rates under the new upstream ownership.¹² Most recently, in 2018, MATL sought, and the Commission approved, an update to its negotiated rate authority to allow MATL to subscribe up to 100% of the Project's capacity to one or more anchor customers through open solicitation.¹³ These authorizations permit MATL to sell transmission capacity at

⁸ *Id.* at 5.

⁹ *Id.* at 6, 10.

¹⁰ The Applicants also note that MATL has entered into two Long-Term TSR Purchase and Service Agreements with negotiated rates for the full 300 MW northbound segment of the Project. *Id.* at 2.

¹¹ *Mont. Alta. Tie, Ltd.*, 116 FERC ¶ 61,071 (2006) (July 2006 Order).

¹² *MATL LLP*, 139 FERC ¶ 61,208 (2012) (June 2012 Order).

¹³ *MATL LLP*, 166 FERC ¶ 61,051 (2019) (January 2019 Order).

negotiated rates using a formal open solicitation process pursuant to the Commission's 2013 Policy Statement.¹⁴

9. In this filing, the Applicants request Commission authorization for MATL to continue to sell transmission service on the Project at negotiated rates under the new BHE Transmission's ownership.¹⁵ The Applicants state that the change in upstream ownership does not have a material effect on the factors that the Commission relied upon in affirming MATL's negotiated rate authority in the January 2019 Order.¹⁶

II. Notice and Intervention

10. Notice of the Applicants' filing was published in the *Federal Register*, 85 Fed. Reg. 8270 (Feb. 13, 2020). NaturEner USA, LLC (NaturEner) and Morgan Stanley Capital Group Inc. (Morgan Stanley) filed timely motions to intervene.

III. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), NaturEner and Morgan Stanley's timely, unopposed motions to intervene serve to make them parties to this proceeding.

B. Negotiated Rate Authority

12. In the January 2019 Order, the Commission granted MATL's request to charge negotiated rates for transmission service on the Project based on the specific circumstances at that time. Since MATL's upstream ownership will change due to BHE Transmission's indirect acquisition of equity interests in MATL, the specific circumstances upon which the existing negotiated rate authority was granted in 2019 will change. Therefore, we will conduct a *de novo* analysis to determine whether the

¹⁴ *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 (2013) (2013 Policy Statement).

¹⁵ The Applicants state that, concurrently with this filing, they have filed a request for Commission approval for BHE Transmission to indirectly acquire all of the equity interests in MATL, pursuant to section 203 of the Federal Power Act (FPA), 16 U.S.C. § 824b, in Docket No. EC20-34-000. Transmittal at 1.

¹⁶ *Id.* (citing January 2019 Order, 166 FERC ¶ 61,051 at P 8).

Project continues to meet the requirements for negotiated rate authority using the criteria set forth in the 2013 Policy Statement.

13. In evaluating negotiated rate applications, the Commission employs a four-step analysis outlined in *Chinook* to examine: (1) the justness and reasonableness of the rates; (2) the potential for undue discrimination; (3) the potential for undue preference, including affiliate preference; and (4) regional reliability and operational efficiency requirements.¹⁷ This approach, which was further developed in the 2013 Policy Statement, simultaneously acknowledges the financing realities faced by merchant transmission developers, the mandates of the FPA, and the Commission's open access requirements. Moreover, this approach allows the Commission to use a consistent framework to evaluate requests for negotiated rate authority from a wide range of merchant transmission projects that can differ substantially from one project to the next.

1. Factor One: Just and Reasonable Rates

14. To approve negotiated rates for a transmission project, the Commission must find that the rates are just and reasonable.¹⁸ In determining whether negotiated rates will be just and reasonable, the Commission considers whether the merchant transmission developer has assumed the full market risk for the cost of constructing its proposed project and is not building within the footprint of the developer's (or an affiliate's) traditionally-regulated system. In such a case, there are no captive customers who would be required to pay the costs of the project. The Commission also considers whether the developer or an affiliate already own transmission facilities in the region where the project is to be located, what alternatives customers have, whether the developer is capable of erecting any barriers to entry among competitors, and whether the developer would have any incentive to withhold capacity.¹⁹

a. The Applicants' Proposal

15. The Applicants represent that BHE Transmission's upstream ownership of MATL would not affect existing rates or change any of the Commission's findings underlying the negotiated rate authority granted in the January 2019 Order.²⁰ The Applicants state

¹⁷ *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134, at P 37 (2009) (*Chinook*).

¹⁸ *Id.*; *Champlain Hudson Power Express, Inc.*, 132 FERC ¶ 61,006, at P 17 (2010) (*Champlain Hudson*).

¹⁹ *Chinook*, 126 FERC ¶ 61,134 at P 38.

²⁰ Transmittal at 9.

that MATL will continue to operate the Project on a merchant transmission basis, and will continue to bear all financial risk for the Project. The Applicants explain that MATL does not—and will not—have captive customers and that it will continue to recover project costs from those customers who were awarded transmission capacity and entered into transmission service agreements from the open seasons already held or to be held in the future.²¹ The Applicants also note that MATL does not have a traditionally-regulated transmission system with native load customers.

16. The Applicants also represent that BHE Transmission does not have any affiliate owning transmission facilities in the United States²² in the same BAA as MATL, other than PacifiCorp's discrete, 10% ownership of the 500 kV Colstrip Line.²³ The Applicants explain that BHE Transmission does not have any transmission affiliates that interconnect with the Project. The Applicants note that northbound capacity on the Project is fully subscribed through two transmission service request agreements with non-affiliated third parties, and that the change in MATL's upstream ownership would not modify those agreements.²⁴ Finally, the Applicants state that MATL will be unable to exercise market power or establish barriers to entry because it will continue to offer service subject to the terms of its Commission-approved OATT.²⁵

²¹ *Id.*

²² *Id.* at 9-10. MATL also notes that BHE Transmission has a transmission owning affiliate in Canada—AltaLink—which participates in the Alberta Electric System Operator footprint.

²³ *Id.* at 6, 9-10. Specifically, the Applicants explains that PacifiCorp, a BHE affiliate, owns a 10% ownership interest in Units 3 and 4 of the Colstrip Generating Facility and corresponding 10% ownership in the Colstrip Line. The Colstrip Line is also operated under the Colstrip Project Transmission Agreement, a joint tariff on file with the Commission. *See Portland General Elec. Co.*, 137 FERC ¶ 61,261 (2011); *Portland General Elec. Co.*, 144 FERC ¶ 61,087 (2013); *Portland General Elec. Co.*, Docket Nos ER11-4636-003 (Dec. 6, 2013) (Delegated Letter Order).

²⁴ MATL holds two firm, long-term point-to-point TSAs with NaturEner for 180 MW and 120 MW northbound capacity, with terms lasting until December 31, 2031, or a period of 25 years from the first day of operation of the Project, whichever is longer. MATL has sold the 300 MW of southbound capacity on a short-term basis since becoming operational, using a Commission-approved process for short-term service, under MATL's OATT. *See* MATL October 22, 2018 filing in Docket No. ER19-151-000, Attach. C (MATL Petition) at 30, 37.

²⁵ Transmittal at 10.

b. Commission Determination

17. Based on the information provided in its request for negotiated rate authority, we find that the Applicants' request for authorization to charge negotiated rates on the Project satisfies the first *Chinook* factor. MATL bears full market risk for the Project, which is currently operational.²⁶ MATL will operate the Project on a merchant transmission basis and may only recover costs from customers it secures through open seasons and under MATL's Commission-approved OATT.

18. BHE Transmission notes its affiliation with PacifiCorp, which owns a 10% interest in the Colstrip Line,. However, PacifiCorp's interest in the Colstrip Line is governed by the stand-alone open access Colstrip Project Transmission Agreement (Colstrip Agreement).²⁷ Furthermore, each owner (including PacifiCorp) maintains its capacity allocation share of the Colstrip Line on its respective Open Access Same-Time Information System, and considers transmission service requests under its applicable OATT and the Colstrip Agreement.²⁸ Therefore, we find that BHE Transmission's affiliation with PacifiCorp does not create concerns under the first *Chinook* factor.

19. We also note that none of BHE Transmission's generation or transmission affiliates is interconnected to the Project and, in any case, recognize that any service provided on MATL's Project shall continue to be pursuant to non-discriminatory service under its OATT. We note that neither MATL nor its affiliates has any captive customers, and also note the Applicants' affirmation that they will not exercise market power. Therefore, we find that MATL and its affiliates have no ability to erect barriers to entry and no incentive to withhold capacity. Accordingly, we find that MATL continues to satisfy the first factor of our negotiated rate analysis.

2. Factor Two: Undue Discrimination

20. To prevent undue discrimination when granting merchant transmission owners negotiated rate authority, the Commission has considered: (1) the terms and conditions of a merchant transmission developer's open season; and (2) its tariff commitments (or in the case of an interconnection with a regional transmission organization (RTO) or an independent system operator (ISO), its commitment to turn over operational control to

²⁶ *Linden VFT, LLC*, 119 FERC ¶ 61,066, at P 17 (2007) (*Linden VFT*).

²⁷ Besides PacifiCorp, the other owners of the Colstrip Line are NorthWestern Corporation, Puget Sound Energy, Inc., Avista Corporation, and Portland General Electric Company.

²⁸ See *Portland General Elec. Co.*, 144 FERC ¶ 61,087 at P 2; and *Portland General Elec. Co.*, 137 FERC ¶ 61,261 at P 26.

that regional entity).²⁹ The 2013 Policy Statement provides an alternative to conducting a formal open season, allowing a developer to demonstrate no undue discrimination or preference by conducting an open solicitation that complies with the requirements of the 2013 Policy Statement.³⁰ Specifically, the developer must: (1) broadly solicit interest in the project from potential customers; and (2) after the solicitation process, demonstrate to the Commission that it has satisfied the solicitation, selection, and negotiation process criteria set forth in the 2013 Policy Statement.³¹

21. In the 2013 Policy Statement, the Commission stated that applicants must issue broad notice of the project in a manner that ensures that all potential and interested customers are informed of the proposed project, such as by placing notice in trade magazines or regional energy publications.³² Such notice should include developer points of contact, pertinent project dates, and sufficient technical specifications and contract information to inform interested customers of the nature of the project, including the following: (1) project size/capacity; (2) end points of the line; (3) projected construction and/or in-service dates; (4) type of line; (5) precedent agreement (if developed); and (6) other capacity allocation arrangements (including how the developer will address potential oversubscription of capacity).³³ The developer should also specify in the notice the criteria it plans to use to select transmission customers. In addition, the developer may also adopt a specific set of objective criteria it will use to rank prospective customers, provided it can justify why such criteria are appropriate. Finally, the Commission expects the developer to update its notice if there are any material changes to the nature of the project or the status of the capacity allocation process, in particular to ensure that interested entities are informed of any remaining available capacity.³⁴

22. Additionally, in the 2013 Policy Statement, the Commission stated that merchant transmission developers must disclose the results of their capacity allocation process. The merchant transmission developer's disclosure would be part of the Commission's approval of the capacity allocation process and thus noticed and acted upon under section

²⁹ *Chinook*, 126 FERC ¶ 61,134 at P 40.

³⁰ 2013 Policy Statement, 142 FERC ¶ 61,038 at PP 15, 23.

³¹ *Id.* P 16.

³² *Id.* P 23.

³³ *Id.* P 20.

³⁴ *Id.* PP 24-27.

205 of the FPA.³⁵ Developers must demonstrate that the processes that led to the identification of transmission customers and the execution of the relevant contractual arrangements are consistent with the 2013 Policy Statement and the Commission's open access principles. Specifically, the developer should describe the criteria that were used to select customers, any price terms, and any risk-sharing terms and conditions that served as the basis for identifying transmission customers selected versus those that were not, as well as provide certain information listed in the 2013 Policy Statement in order to provide transparency to the Commission and interested parties.³⁶

23. In the 2013 Policy Statement, the Commission emphasized that the information in the post-selection demonstration is an essential part of a merchant transmission developer's request for approval of a capacity allocation process, and that the developer will have the burden to demonstrate that its process was in fact not unduly discriminatory or preferential, and resulted in rates, terms, and conditions that are just and reasonable.³⁷ The Commission allows developers discretion in the timing of requests for approval of capacity allocation processes. For example, a developer can seek approval of its capacity allocation approach after having completed the process of selecting customers in accordance with Commission policies. Alternatively, a developer can first seek approval of its capacity allocation approach, and then can demonstrate in a compliance filing filed in response to the Commission's order approving that approach that the developer's selection of customers was consistent with the approved selection process.

a. The Applicants' Proposal

24. The Applicants state that, in keeping with commitments specified in the January 2019 Order, MATL will continue to use an open and transparent solicitation process consistent with the 2013 Policy Statement for future long-term sales of existing capacity. They also state that service over the Project will be subject to MATL's existing OATT, which will ensure that such service is provided on an open access and non-discriminatory basis.³⁸

25. MATL also commits to submit a post-open solicitation report demonstrating that the processes that led to transmission customer selection and execution of relevant transmissions service agreements are consistent with both the 2013 Policy Statement and

³⁵ 16 U.S.C. § 824d (2018).

³⁶ 2013 Policy Statement, 142 FERC ¶ 61,038 at P 30.

³⁷ *Id.* P 32.

³⁸ Transmittal at 11.

the Commission's open access principles, in keeping with commitments specified in the January 2019 Order.

b. Commission Determination

26. We acknowledge MATL's commitment to conduct an open solicitation and capacity allocation process consistent with the requirements of the 2013 Policy Statement, and will reserve judgment on whether that open solicitation and capacity allocation process was not unduly discriminatory, pending MATL making a compliance filing within 30 days of the close of the open solicitation process. To satisfy the second factor of the Commission's negotiated rate authority, the compliance filing should disclose the results of its capacity allocation process and describe relevant criteria, price terms, and any risk-sharing terms and conditions that were used as the basis for identifying the transmission customers selected, along with other information required by the 2013 Policy Statement in order to demonstrate that the process was not unduly discriminatory.

3. Factor Three: Undue Preference and Affiliate Concerns

27. In the context of merchant transmission, the Commission's concerns regarding the potential for affiliate abuse arise when the merchant transmission developer is affiliated with either the anchor customer, participants in the open season or solicitation, or customers that subsequently take service on the merchant transmission line. The Commission expects an affirmative showing that the affiliate is not afforded an undue preference, and the developer bears a high burden to demonstrate that the assignment of capacity to its affiliate and the corresponding treatment of nonaffiliated potential customers is just, reasonable, and not unduly discriminatory or preferential.³⁹

a. The Applicants' Proposal

28. The Applicants state that BHE Transmission's acquisition of MATL will not create undue preference or affiliate abuse concerns. The Applicants explain that, while BHE Transmission has affiliates who own natural gas pipelines and electric generation and transmission, with the exception of PacifiCorp's 10% ownership interest in the Colstrip Line and Units 3 and 4 of the Colstrip generating facility, none of these affiliates is located or currently does business in the region where the Project is located. Further, the Applicants assert that the Project does not interconnect with any existing facilities owned by MATL or BHE Transmission affiliates.⁴⁰

³⁹ 2013 Policy Statement, 142 FERC ¶ 61,038 at P 34.

⁴⁰ Transmittal at 12.

29. The Applicants additionally note that none of the current customers with executed transmission service agreements for the Project (including the long-term transmission service request agreements) is a BHE Transmission affiliate; moreover, no BHE Transmission affiliate has participated in a MATL open solicitation, and they do not anticipate any affiliates doing so at this time. The Applicants state that MATL will, consistent with its prior commitment, inform the Commission if these circumstances change.⁴¹

30. Further, the Applicants reaffirm MATL's commitment to comply with applicable reporting requirements regarding affiliate abuse, and to demonstrate in a post-open solicitation report that the selection process was consistent with the required information reflected in the 2013 Policy Statement. Additionally, the Applicants state that, consistent with Commission precedent, if an affiliate wishes in the future to participate in any open solicitation process, MATL commits to retaining an independent consultant for the process, and complying with any applicable affiliate rules to ensure that any such process would be conducted in a fair and non-discriminatory manner.⁴²

31. Finally, the Applicants commit that, to the extent any of MATL's affiliates are allocated capacity on the Project, MATL will: (1) maintain separate books and records that will be made available to the Commission in accordance with Commission regulations; (2) comply with Commission's Standards of Conduct and other affiliate rules and applicable filing requirements; and (3) continue to file electric quarterly reports of its transactions.⁴³

b. Commission Determination

32. We acknowledge MATL's commitment to notify the Commission of any changes to its affiliate or corporate circumstances. Moreover, we acknowledge MATL's commitment that, if any affiliate is allocated capacity on the Project, MATL will, in its post-open solicitation filing, detail the results and describe the process in sufficient detail to demonstrate that no affiliate has been given undue preference, and to show that the treatment of unaffiliated customers is just, reasonable, and not unduly preferential or

⁴¹ *Id.* at 12-13.

⁴² *Id.* at 13 (citing 2013 Policy Statement, 142 FERC ¶ 61,038 at PP 30, 32).

⁴³ *Id.* (citing 18 C.F.R. § 35.10(b) (2019); *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 118 FERC ¶ 61,119, *order on reh'g*, Order No. 890-A, 121 FERC ¶ 61,297 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009)).

discriminatory. We also note that MATL commits to retain an independent consultant to oversee any future open solicitation process in which an affiliate intends to participate.

33. Additionally, we note MATL's commitment that, to the extent any of MATL's affiliates are allocated capacity on the Project, MATL will: (1) maintain separate books and records that will be made available to the Commission in accordance with the Commission's regulations; (2) comply with the Commission's Standards of Conduct and other affiliate rules and applicable filing requirements; and (3) continue to file electric quarterly reports of its transactions.⁴⁴ These commitments help ensure that all transactions are transparent.

34. We accept these commitments as satisfying our affiliate preference concerns, subject to the Commission's approval of MATL's subsequent post-solicitation compliance filing demonstrating that the capacity allocation process is just, reasonable, and not unduly preferential or discriminatory.

4. Factor Four: Regional Reliability and Operational Efficiency

35. To ensure regional reliability and operational efficiency, the Commission requires that any merchant transmission developer whose project is connected to an RTO/ISO turn over operational control of its project to that regional entity. Merchant transmission projects, like cost-based transmission projects, are also subject to mandatory reliability requirements.⁴⁵ Merchant transmission developers are required to comport with all applicable requirements of the North American Electric Reliability Corporation (NERC) and any regional reliability council in which they are located.

a. The Applicants' Proposal

36. The Applicants state that, consistent with *Chinook*, MATL will continue to comply with all applicable reliability requirements and procedures of NERC, as well as those of the Western Electric Coordinating Council (WECC) and the Alberta Reliability Committee.⁴⁶ The Applicants also note that the Project is not located in an RTO/ISO,

⁴⁴ See, e.g., *Grain Belt Express Clean Line LLC*, 147 FERC ¶ 61,098, at P 29 (2014) (*Grain Belt Express*); *Southern Cross Transmission LLC*, 157 FERC ¶ 61,090, at P 30 (2016) (*S.Cross*); *Linden VFT, LLC*, 162 FERC ¶ 61,297, at P 31 (2018).

⁴⁵ See, e.g., *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, 114 FERC ¶ 61,104, order on reh'g, Order No. 672-A, 114 FERC ¶ 61,328 (2006).

⁴⁶ Transmittal at 14.

and that MATL previously satisfied the reliability requirement based on its commitment to enter into agreements with neighboring systems to coordinate power flows and operations. The Applicants state that MATL has subsequently entered into a Coordinated Operating Agreement among MATL, NorthWestern Corporation, and the Alberta Electric System Operator.⁴⁷

b. Commission Determination

37. Because the Project is not located in an RTO/ISO, MATL retains operational control of the transmission line. We acknowledge MATL's commitment to continue to satisfy all applicable standards and reliability requirements, including NERC and WECC reliability requirements and procedures, and to continue coordinating with neighboring systems through its aforementioned Coordinated Operating Agreement. Accordingly, we find that the Applicants' proposal meets the regional reliability and operational efficiency requirements, subject to MATL's continuing participation in the necessary and applicable regional processes.

C. Requests for Waiver

1. The Applicants' Proposal

38. The Applicants also request continuation of waivers of certain cost-based data filing requirements that were granted in the July 2006 Order and the June 2012 Order, specifically, section 35.13(a) of the Commission's regulations and the filing requirements of Subparts B and C of Part 35 of the Commission's regulations (except for sections 35.12(a), 35.13(b), 35.15, and 35.16). The Applicants state that a continuation of these waivers is appropriate because MATL currently charges negotiated rates and explain that the Commission previously found that the Commission's Part 35 regulations requiring filing of cost-based data are not applicable to MATL.⁴⁸

⁴⁷ *Id.* (citing January 2019 Order, 166 FERC ¶ 61,051 at P 34; *MATL, LLP*, Docket No. ER08-369-000 (Jan. 28, 2008) (Delegated Letter Order)).

⁴⁸ *Id.* at 15 (citing *Hudson Transmission Partners, LLC*, 135 FERC ¶ 61,104, at P 42 (2011) (*Hudson Transmission*); *Tres Amigas LLC*, 130 FERC ¶ 61,207, at P 103 (2010) (*Tres Amigas*); *Wyoming Colorado Intertie, LLC*, 127 FERC ¶ 61,125, at P 62 (2009) (*Wyoming*); *Linden VFT*, 119 FERC ¶ 61,066 at P 42).

39. The Applicants also request continued waiver of Part 141 (except Sections 141.14 and 141.15), including the Form No. 1 filing requirement. The Applicants explain that the Commission previously granted MATL's request for waiver of the Form No. 1 filing requirement in the July 2006 and June 2012 orders, and has granted waiver of Part 141 requirements to merchant transmission owners in other Commission proceedings.⁴⁹

2. Commission Determination

40. The Applicants request waiver of certain cost-based data filing requirements that the Commission previously granted in the July 2006 Order and June 2012 Order. Because MATL will charge negotiated rates, we find that the Part 35 regulations requiring the filing of cost-based data are not applicable. Therefore, for good cause shown, and consistent with our findings for MATL and other merchant transmission proposals, we will grant waiver of section 35.13(a) of the Commission's regulations and the filing requirements of Subparts B and C of Part 35 of the Commission's regulations except for sections 35.12(a), 35.13(b), 35.15, and 35.16.⁵⁰

41. We will also grant the Applicants' request for waiver of Part 141 (with the exception of sections 141.14 and 141.15) of the Commission's regulations, including the Form No. 1 filing requirement. The Commission previously granted MATL's request for waiver of the Form No. 1 filing requirement in the July 2006 Order, and has previously granted waiver of the Part 141 requirements to MATL and to merchant transmission owners in other Commission proceedings,⁵¹ and the new ownership structure does not raise additional concerns in this regard.

⁴⁹ *Id.* (citing July 2006 Order, 116 FERC ¶ 61,071 at P 66; June 2012 Order, 139 FERC ¶ 61,208 at P 30; *Wyoming*, 127 FERC ¶ 61,125 at P 65; *Linden VFT*, 119 FERC ¶ 61,066 at P 44).

⁵⁰ *Grain Belt Express*, 147 FERC ¶ 61,098 at P 34; *Hudson Transmission*, 135 FERC ¶ 61,104 at P 42; *Tres Amigas*, 130 FERC ¶ 61,207 at P 103; *Wyoming*, 127 FERC ¶ 61,125 at P 62; *Linden VFT*, 119 FERC ¶ 61,066 at P 42.

⁵¹ *Grain Belt Express*, 147 FERC ¶ 61,098 at P 35; *Neptune Regional Transmission System, LLC*, 139 FERC ¶ 61,110, at P 12 (2012); *Wyoming*, 127 FERC ¶ 61,125 at P 65; *Linden VFT*, 119 FERC ¶ 61,066 at P 44; July 2006 Order, 116 FERC ¶ 61,071 at P 66.

42. We find that it is important for transmission-owning utilities (including merchant transmission owners not subject to cost-based regulation) to maintain their books and records in accordance with the Uniform System of Accounts.⁵² Thus, consistent with the Commission's determinations in prior MATL orders,⁵³ MATL must continue to ensure that: (1) it maintains books and records for the Project that comply with the Uniform System of Accounts in Part 101 of the Commission's regulations,⁵⁴ and subject to examination as required in Part 41 of the Commission's regulations;⁵⁵ and (2) its books and records are audited by an independent auditor.⁵⁶ These commitments will assist the Commission in carrying out its oversight role. Consistent with the Commission's prior determination, MATL must continue to file financial statements and reports in accordance with Parts 141.14 and 141.15 of the Commission's regulations.⁵⁷

The Commission orders:

(A) The Applicants are hereby granted authority to sell transmission rights at negotiated rates, subject to conditions, as discussed in the body of this order.

(B) The Applicants' 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, of the Form No. 1 filing requirement, and of Part 141 of the Commission's regulations, with the exception of sections 141.14 and 141.15, is hereby granted, as discussed in the body of this order.

⁵² June 2012 Order, 139 FERC ¶ 61,208 at P 31; *Grain Belt Express*, 147 FERC ¶ 61,098, at P 24; *S. Cross*, 157 FERC ¶ 61,090 at P 26; *Tres Amigas*, 130 FERC ¶ 61,207 at P 49.

⁵³ June 2012 Order, 139 FERC ¶ 61,208 at P 31; January 2019 Order, 166 FERC ¶ 61,051 at P 25.

⁵⁴ 18 C.F.R. pts. 41, 101 (2019).

⁵⁵ *Id.* at pt. 41.

⁵⁶ *Chinook*, 126 FERC ¶ 61,134 at P 62; *Champlain Hudson*, 132 FERC ¶ 61,006 at P 48; *Tres Amigas*, 130 FERC ¶ 61,207 at P 90; *Grain Belt Express*, 147 FERC ¶ 61,098 at P 24; *S. Cross*, 157 FERC ¶ 61,090 at P 26.

⁵⁷ 18 C.F.R. pt. 141 (2019).

(C) The Applicants are hereby directed to file with the Commission a compliance filing within 30 days after the close of the open solicitation process, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.