160 FERC ¶ 61,074
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, and Robert F. Powelson.

SunZia Transmission, LLC Docket No. ER17-388-000

ORDER AUTHORIZING NEGOTIATED RATE PROPOSAL AND ACCEPTING ANCHOR CUSTOMER OPEN SOLICITATION AND SELECTION REPORT

(Issued September 20, 2017)

1. On November 18, 2016, SunZia Transmission, LLC (SunZia Transmission) filed: (1) an application requesting authorization to charge negotiated rates for transmission service over the high voltage alternating current (HVAC) SunZia Southwest Transmission Project (Project); and (2) a report on its open solicitation and selection process for anchor customers (Selection Report) for the first 1,500 MW of the Project (Phase I). In this order, the Commission grants SunZia Transmission's request for negotiated rate authority and accepts SunZia Transmission's Selection Report.

I. <u>Background</u>

2. SunZia Transmission states that it is the independent developer of the Project and is owned by SouthWestern Power Group (SW Power),[1] ECP SunZia, LLC (ECP SunZia), Shell WindEnergy, Inc. (Shell WindEnergy) (collectively, Merchant Owners), as well as Tucson Electric Power Company (Tucson Electric). ECP SunZia and SW Power are wholly owned by MMR Group, Inc. (MMR), a privately-owned construction services firm based in Baton Rouge, Louisiana. SunZia Transmission owns the Project jointly as a tenant-in-common with Salt River Project Agricultural Improvement and Power District (Salt River) and Tri-State Generation and Transmission Association, Inc. (Tri-State).

[1] SW Power currently is developing the Bowie Power Station in southeastern Arizona.

Tucson Electric, Salt River, and Tri-State will make their capacity shares available separately through their respective open access transmission tariffs (OATT).[2]

3. SunZia Transmission states that the Project will consist of up to two single-circuit 500 kV transmission lines, approximately 515 miles in length that will extend from an extra high voltage grid in New Mexico and Arizona to key interconnections. SunZia Transmission states that depending on the final electrical configuration, the Project will link 3,000 MW to 4,500 MW of primarily renewable, location-constrained generation resources in New Mexico and Arizona with markets and customers to the west.

4. According to the application, SunZia Transmission plans to complete the Project in two phases. Phase I includes a 500 kV HVAC transmission line and substations, totaling 1,500 MW of capacity. Phase II includes a 500 kV HVAC transmission line (for an additional 1,500 MW of capacity) or a high voltage direct current transmission line (for an additional 3,000 MW of capacity).[3] SunZia Transmission states that construction is expected to commence during the first quarter of 2018, placing Phase I of the Project in service by the fourth quarter of 2020. The instant filing addresses negotiated rate authority and the capacity allocation for Phase I only.

5. On May 20, 2011, the Commission granted negotiated rate authority to each of the Merchant Owners and authorized them to enter into negotiated presubscriptions with anchor customers in open seasons for up to 50 percent of their *pro rata* share of the

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[2] SunZia Transmission states that it owns 94.911 percent of the Project, which will be allocated among its owners as follows: ECP SunZia, 52.784 percent; Shell WindEnergy, 1.771 percent; SW Power, 39.977 percent; and Tucson Electric, 0.379 percent. Salt River and Tri-State own 4.253 percent and 0.835 percent of the Project, respectively. SunZia Transmission, LLC, Docket No. ER17-388-000, at 12 (November 16, 2016) (Negotiated Rate Filing).

[3] *Id*. at 8. SunZia Transmission states that the timeline and configuration for Phase II will depend upon the timing of the financing and construction of Phase I, as well as the market for additional transmission capacity sales to qualified customers at rates sufficient to financially support Phase II of the Project.

Project's Merchant Capacity.[4] The Commission required that the remaining capacity be made available in open seasons.[5]

6. Following the issuance of the 2011 Order, SunZia Transmission initiated its open solicitation process, which yielded a letter of intent to negotiate a precedent agreement for up to 1,500 MW of transmission capacity from First Wind Energy, LLC (First Wind). Subsequently in January 2015, SunEdison, Inc. (SunEdison), acquired First Wind and expressed its intent to honor the letter of intent. However, on April 21, 2016, SunEdison filed for bankruptcy protection. As a result, SunZia Transmission concluded that SunEdison would be unable to negotiate the precedent agreement.[6]

7. SunZia Transmission states that, in May 2016, it reinitiated a broad marketing effort for the Merchant Capacity through an open solicitation process. SunZia Transmission published a series of announcements via email and energy publications, conducted meetings with entities that responded to the announcements and conducted initial discussions. On July 26, 2016, SunZia Transmission formally solicited written responses to its open solicitation and received initial inquiries from 12 interested parties. After an additional exchange of information, SunZia Transmission states that, four entities submitted applications on or before August 10, 2016. On August 26, 2016, SunZia Transmission selected Pattern Energy Group, LP (Pattern Development) as the "preferred" anchor customer to enter into a precedent agreement for up to 1,500 MW of Merchant Capacity (100 percent of the Merchant Capacity for Phase I).[7]

II. Instant Filing

A. Negotiated Rate Authority

8. SunZia Transmission requests that the Commission re-issue and revise the authorizations that it granted in the 2011 Order due to the changed circumstances. First, SunZia Transmission now seeks negotiated rate authority for itself as the

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[4] The Merchant Capacity of the Project is the aggregate capacity owned by the Merchant Owners on Phase I of the Project.

[5] *SunZia Transmission, LLC*, 135 FERC ¶ 61,169 (2011) (2011 Order). *SunZia Transmission, LLC*, 131 FERC ¶ 61,162 (2010).

[6] Negotiated Rate Filing at 13-14.

[7] SunZia Transmission, LLC, Docket No. ER17-388-000, at 25 (November 16, 2016) (Selection Report Filing).

transmission provider on behalf of its Merchant Owners. SunZia Transmission states that it will administer the interests of the three Merchant Owners through a single OATT and coordinate all aspects of the Project, including transmission service, operations, maintenance, and compliance. Second, consistent with the Commission's 2013 Policy Statement, SunZia Transmission requests authorization to enter into an agreement with an anchor customer, including an affiliate, for up to 100 percent of the Project's Merchant Capacity.[8]

9. SunZia Transmission also requests that the Commission confirm its prior finding in the 2011 Order that the Merchant Owners have ownership shares in the Project in proportion to their respective investments in the Project and that the Merchant Owners of the Project are not affiliated by virtue of their joint investment in the Project.[9] Finally, SunZia Transmission requests that, consistent with the Policy Statement, the Commission authorize it to offer "disparate terms to different potential customers in any required open seasons (though none should be required) or otherwise, provided that distinctions are 'based on transparent and not unduly discriminatory or preferential criteria.'"[10]

B. <u>Selection Report</u>

10. SunZia Transmission contemporaneously filed a Selection Report in the same docket. The Selection Report sets forth SunZia Transmission's open solicitation and anchor customer selection process. As detailed below, SunZia Transmission explains that the selection process led it to select Pattern Development as the preferred anchor customer that will enter into a precedent agreement for up to 1,500 MW of Merchant Capacity (i.e., 100 percent of the Merchant Capacity on Phase I of the Project).[11]

11. SunZia Transmission states that, in order to enhance the likelihood of obtaining permanent financing for the Project, SunZia Transmission and Pattern Development have

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[8] Negotiated Rate Filing at 4, 23 (citing *Allocation of Capacity on New Merchant Transmission Projects and New Cost -Based, Participant-Funded Transmission Projects; Priority Rights to New Participant-Funded Transmission*, Final Policy Statement, 142 FERC ¶ 61,038, at P 16 (2013) (Policy Statement)).

[9] Negotiated Rate Filing at 16; *see also* 2011 Order, 135 FERC ¶ 61,169 at P 38.

[10] Negotiated Rate Filing at 31-32. SunZia Transmission notes that in the 2011 Order, the Commission accepted each Merchant Owner's commitment to offer the same rates, terms, and conditions to customers under the open season as offered to anchor customers, assuming equal or superior creditworthiness of the customers.

[11] Selection Report Filing at 5.

contemplated potential co-ownership of both the Project and a wind generation project that Pattern Development owns (Pattern Wind), for which Pattern Development seeks to use the Project's capacity. SunZia Transmission explains that such co-ownership could mitigate the risk inherent in the mutual dependence between their respective projects and increase the likelihood of their successful development.[12] SunZia Transmission states that, while the co-ownership arrangement has been discussed, SunZia Transmission and Pattern Development are not currently affiliated.

III. Notice of Filing

12. Notice of SunZia Transmission's filings was published in the *Federal Register*, 81 Fed. Reg. 86,329 (2016), with interventions and protests due on or before December 9, 2016. Navajo Tribal Utility Authority and Pattern Development filed timely motions to intervene.

IV. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), the timely, unopposed motions to intervene serve to make Navajo Tribal Utility Authority and Pattern Development parties to this proceeding.

B. Request for Negotiated Rate Authority and Open Season Report

14. In addressing requests for negotiated rate authority from merchant transmission providers, the Commission is committed to fostering the development of such projects, but it requires reasonable and meaningful protections to be in place to preserve open access principles and to ensure that the resulting rates for transmission service are just and reasonable.[13] The Commission's analysis for evaluating negotiated rate applications focuses on four areas: (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.[14]

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[12] *Id.* at 3.

[13] *See, e.g.*, *Western Spirit Clean Line LLC*, 155 FERC ¶ 61,252 (2016); *Tres Amigas, LLC*, 153 FERC ¶ 61,287 (2015) (*Tres Amigas II*).

[14] *See Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134, at P 37 (2009) (*Chinook*).

15. The Commission also issued a Policy Statement to clarify and refine its policies governing the allocation of capacity for new merchant transmission projects and new non-incumbent, cost-based, participant-funded transmission projects.[15] The Commission allows the developer of a new merchant transmission project to select a subset of customers based on not unduly discriminatory or preferential criteria and to negotiate directly with those customers to reach agreements for procuring up to 100 percent of transmission capacity. In order for this to occur, the developer must: (1) broadly solicit interest in the project from potential customers; and (2) demonstrate to the Commission that the developer has satisfied the solicitation, selection, and negotiation process set forth in the Policy Statement.[16] To the extent the developer complies with these requirements, the Commission will find that the developer has satisfied the second (undue discrimination) and third (undue preference) factors of the four-factor analysis.[17]

16. Under the Policy Statement, once a developer has identified a subset of customers through the open solicitation process, the Commission will allow the developer to engage in bilateral negotiations with each potential customer. In these negotiations, the Commission will allow for distinctions among prospective customers based on transparent and not unduly discriminatory or preferential criteria, with the potential result that a single customer, including an affiliate, may be awarded up to 100 percent of the transmission capacity.[18]

1. Factor One: Just and Reasonable Rates

17. To approve negotiated rates for a transmission project, the Commission must find that the rates are just and reasonable.[19] To do so, the Commission must determine that the merchant transmission owner has assumed the full market risk for the cost of constructing its proposed transmission project. Additionally, the Commission determines whether the project is being built within the footprint of the merchant transmission owner's (or an affiliate's) traditionally regulated transmission system; and, if so, the Commission must determine that there are no captive customers that would be required to pay the costs of the project. The Commission also considers whether the merchant transmission owner or an affiliate already owns transmission facilities in the particular region where the project is to be located, what alternatives customers have, whether the

[15] Policy Statement, 142 FERC ¶ 61,038.

[16] *Id.* P 16.

[17] *Id.* P 15.

[18] *Id.* P 28.

[19] *See, e.g., Champlain Hudson Power Express, Inc.*, 132 FERC ¶ 61,006 (2010).

merchant transmission owner is capable of erecting any barriers to entry among competitors, and whether the merchant transmission owner would have any incentive to withhold capacity.

a. SunZia Transmission's Proposal

18. SunZia Transmission states that it will assume full market risk, and affirms that none of the Merchant Owners, or their affiliates, owns any traditionally regulated transmission systems with captive customers, or any other transmission systems. SunZia Transmission notes that potential transmission customers will have alternatives to service over the Project. Specifically, the Project will interconnect with, or near, public utilities in Arizona and New Mexico from which customers can secure transmission service and potential expansion of transmission systems under cost-based rates. Therefore, SunZia Transmission explains that these alternatives would place downward pressure on the Project's negotiated rates that the Merchant Owners could charge.[20]

19. SunZia Transmission states that, once the Project is operational, the Commission's open access requirements will preclude it from erecting barriers to entry in the relevant market. Specifically, SunZia Transmission explains that it will file on behalf of its Merchant Owners a single OATT to provide third parties with a transparent and uniform process for requesting interconnection and transmission service after the initial capacity presubscriptions. SunZia Transmission states that all customers with transmission rights will retain firm tradable secondary rights with respect to their contracted capacity. Finally, SunZia Transmission agrees to maintain an Open Access Same-Time Information System, to ensure uniformity of customer treatment, and to designate an operations and maintenance manager for the Project.[21]

20. Additionally, SunZia Transmission notes that Pattern Development has a limited interest in transmission facilities in the region where the Project is located. Specifically, SunZia Transmission represents that Pattern Development, or an affiliate, owns the majority interest in Western Interconnect LLC, which, in turn, owns a 35-mile, 1,100 MW, 345 kV transmission facility. However, SunZia Transmission asserts that Pattern Development's anticipated interest in the Project would not decrease competition or otherwise cause the Project's Merchant Owners to have undue power in the market for transmission services.

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[20] Negotiated Rate Filing at 21.

[21] *Id.* at 20-22. SunZia Transmission states that this commitment is consistent with the prior commitment of the Merchant Transmission Owners. *See* 2011 Order, 135 FERC ¶ 61,169 at P 22.

b. Commission Determination

21. We conclude that SunZia Transmission's request for authority to charge negotiated rates for transmission service on the Project meets the first of the four factors set forth in *Chinook*, just and reasonable rates. SunZia Transmission will assume the full financial risk for the Project and will have no captive customers. Moreover, SunZia Transmission and the Merchant Owners have no affiliates that own or operate transmission facilities in the same region as the Project.

22. In addition, no entity is required to purchase transmission service from SunZia Transmission; customers will purchase transmission service only to the extent that it is cost-effective for them to do so, since they would have the alternative of purchasing transmission service from incumbent transmission providers operating in the region. We find that neither SunZia Transmission, the Merchant Owners, nor any affiliate can erect barriers to entry in the relevant markets, nor do these entities have the incentive to withhold capacity on the Project. As a result, we conclude that SunZia Transmission's proposal has met the first factor of the four-factor test, just and reasonable rates.

2. Factor Two: Undue Discrimination

23. As explained in *Chinook*, the Commission has in the past primarily looked at two factors to ensure that applicants cannot exercise undue discrimination when approving negotiated rate authority: (1) the terms and conditions of a merchant developer's open season; and (2) its OATT commitments (or, in the Regional Transmission Organization (RTO) or Independent System Operator (ISO) context, its commitment to turn operational control over to the RTO or ISO).

24. Pursuant to the Policy Statement, a developer may demonstrate no undue discrimination or preference by conducting an open solicitation that broadly solicits interest in a project from potential customers and, after the solicitation process, demonstrate to the Commission that it has satisfied the solicitation, selection, and negotiation process criteria set forth in the Policy Statement.[22]

25. Additionally, the developer 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.[23] Such notice should include developer points of contact, pertinent project dates, and sufficient

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[22] Policy Statement, 142 FERC ¶ 61,038 at P 16.

[23] *Id.* P 23.

technical specifications and contract information to inform interested customers of the technical 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).[24] The developer also should specify in the notice how it plans to select transmission customers. In addition, the developer may also adopt a specific set of objective criteria 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.[25]

26. In the Policy Statement, the Commission stated that merchant developers must disclose the results of their capacity allocation process for approval under section 205 of the Federal Power Act.[26] 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 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 Policy Statement, in order to provide transparency to the Commission and interested parties.[27]

27. The Commission emphasized in the Policy Statement that the information in the post-selection demonstration is an essential part of a merchant developer's request for

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[24] *Id.* P 20.

[25] *Id.* PP 24-27.

[26] 16 U.S.C. § 824d (2012).

[27] Policy Statement, 142 FERC ¶ 61,038 at P 30. In the Policy Statement, the Commission indicated that the developer should at a minimum, provide: (1) broad notice of the project information and customer evaluation criteria; (2) the identification of customers who participated in the capacity allocation process; (3) the basis for the developer's decision to prorate (or not) capacity if oversubscribed; (4) the basis for a developer's decision not to increase capacity if the proposed project is oversubscribed; (5) justification for offering more favorable rates, terms and conditions to certain customers; (6) the criteria for distinguishing customers; and (7) an explanation of the decisions used to select and reject specific customers.

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.[28] 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 demonstrate in a compliance filing how the developer's selection of customers was consistent with the approved selection process.

a. **<u>SunZia Transmission's Proposal</u>**

28. SunZia Transmission states that it has conducted an anchor customer selection process consistent with the Policy Statement. SunZia Transmission explains that it initiated a broad marketing effort for the Merchant Capacity. In addition, SunZia Transmission has filed its Selection Report, which details its open solicitation process, including its broad marketing efforts, the communication of its anchor tenant criteria, initial screening and subsequent ranking of customers using the evaluation criteria, and selection of Pattern Development as the preferred anchor tenant to negotiate a bilateral contract.

29. SunZia Transmission explains that the Selection Report sets forth the evaluation process, the ranking of respondents, and the selection of Pattern Development as the preferred anchor tenant. The Selection Report includes the criteria that SunZia Transmission used to assess potential anchor tenant customers (Anchor Tenant Criteria). SunZia Transmission explains that the Anchor Tenant Criteria included six equally weighted criteria used to rank customers. The first five criteria concerned capacity commitment, creditworthiness, ownership and maintenance expertise, regional experience, and relationships in California, New Mexico, and Arizona. The sixth criterion enabled an applicant to file any additional information to support its application (e.g., risk sharing, merchant transmission experience, and knowledge of project-on-project risk).[29]

30. SunZia Transmission circulated an email to each recipient of the Anchor Tenant Criteria, advising that its preference was to allocate capacity to firms with significant experience in the electricity industry that have the ability to enter into long-term transmission service agreements with SunZia Transmission, ideally within the next

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[28] *Id.* P 32.

[29] Selection Report Filing at 23-26. The Anchor Tenant Criteria are discussed more fully below.

two to three years. SunZia Transmission requested information about the generation for which transmission was sought and the earliest date the applicant would have financial and other capabilities to enter into a precedent agreement and transmission service agreement for firm transmission service. SunZia Transmission requested written submissions by August 10, 2016, and reports that it received four applications for transmission capacity on the Project.[30]

31. SunZia Transmission's Selection Report indicates that it preferred to award a single anchor customer 100 percent of the Merchant Capacity because that would materially enhance its ability to obtain project financing, thereby enhancing the prospects for overall success. Moreover, SunZia Transmission asserts that a single, creditworthy anchor customer reduces project-on-project risk more than having multiple anchor customers developing multiple power projects.[31] In the event the proposed project becomes oversubscribed with requests for transmission capacity, SunZia Transmission explains that it does not intend to increase capacity for Phase I of the Project because 1,500 MW of renewable energy is the maximum the renewable energy market and existing high voltage transmission system could initially absorb.[32]

32. Finally, as the Project is located outside of an RTO or ISO, SunZia Transmission states that it commits to file an OATT that includes non-discriminatory provisions, adheres to Order No. 890,[33] and provides for open and nondiscriminatory service on the Merchant Capacity.[34]

b. **Commission Determination**

33. We find SunZia Transmission's broad solicitation of potential customers satisfies *Chinook* and the requirements set forth in the Policy Statement for the second prong of

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[30] *Id*. at 13-15.

[31] *Id*. at 16-17.

[32] *Id*. at 19.

[33] Negotiated Rate Filing at 27 (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs.¶ 31,261 (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 (2009), *order on reh'g*, Order No. 890-D, 129 FERC ¶ 61,126 (2009)).

[34] *Id*.

the four factor test, no undue discrimination. SunZia Transmission issued broad notice soliciting interest in the Project via newspapers, industry publications, emails, and announcements on the Company's website beginning in April 2016. Through this initiative, SunZia Transmission reports that MMR held initial informational discussions with four interested parties regarding wind generation opportunities in the Project area. In May 2016, further discussions with two interested parties occurred; however, no arrangements, commitments, or agreements were made in any of these discussions. According to SunZia Transmission, discussions with multiple parties about jointly developing a wind farm in the Project's vicinity continued.[35]

34. Between May and June of 2016, SunZia Transmission explains that it published announcements for Phase I of the Project in five publications, as well as e-mailed the announcement to over 90 entities that SunZia Transmission assessed could be potentially interested in the Project capacity.[36] SunZia Transmission notes that the information circulated provided the required technical specifications[37] and contract information to inform interested customers of the nature of the Project and invited potentially interested organizations to contact SunZia Transmission to receive the Anchor Tenant Criteria.

35. Our review indicates that the initial screening criteria were made available through SunZia Transmission's broad marketing effort. The Anchor Tenant Criteria were provided to all who expressed interest in response to the broad marketing effort, and the option for risk sharing was circulated to the four applicants who submitted proposals in response to the open season. Based on our review of the Selection Report, we conclude that SunZia Transmission offered equal terms to all applicants. We also find that the Anchor Tenant Criteria used to evaluate and rank proposals allowed SunZia Transmission to distinguish among potential customers. Thus, we find that SunZia Transmission's application of the Anchor Tenant criteria to rank applicants (and selection of Pattern Development as the "preferred" anchor customer) was conducted in a manner that was not unduly discriminatory or preferential. While SunZia Transmission and Pattern Development are contemplating a future affiliate relationship, based on statements in the record, there has been no affiliate relationship to date, and no party has argued that undue discrimination occurred.

36. SunZia Transmission also commits that, upon Project commencement, SunZia Transmission will maintain books and records for the Project that comply with

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[35] Selection Report Filing at 11. SunZia Transmission indicates that Pattern Development was among the parties who expressed initial interest.

[36] *Id*. at 11, 13.

[37] *Id*. at 12.

the Uniform System of Accounts found in part 101 of the Commission's regulations, subject to examination as required in part 41 of the Commission's regulations, and to ensure that its books and records are audited by an independent auditor.[38] We rely on these commitments in our finding that SunZia Transmission conditionally satisfies this factor, as these commitments will assist the Commission in carrying out its oversight role.

37. We accept SunZia Transmission's commitment to file an OATT that adheres to the *pro forma* OATT prior to the commencement of service. Any deviations from the *pro forma* OATT must be supported and will be evaluated by the Commission when they are submitted so that the Commission can ensure that SunZia Transmission will provide open access and non-discriminatory transmission service on the Project.

3. Factor Three: Undue Preference and Affiliate Concerns

38. In the context of merchant transmission, the Commission's concerns regarding the potential for affiliate abuse arise when the merchant transmission owner is affiliated with the anchor customer, participants in the open season or solicitation, and/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. SunZia Transmission's Proposal

39. SunZia Transmission states that none of the Merchant Owners (or their affiliates) owns a traditionally regulated transmission system with captive customers, nor do they own any other transmission facilities in the region.[40] In addition, SunZia Transmission states that it and the Merchant Owners will comply with the Commission's Standards of Conduct as well as other affiliate rules and filing requirements.[41]

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[38] Negotiated Rate Filing at 27. *See Chinook*, 126 FERC ¶ 61,134 at P 62; *Champlain Hudson*, 132 FERC ¶ 61,006 at P 48; *Tres Amigas LLC*, 130 FERC ¶ 61,207, at P 90 (2010) (*Tres Amigas*).

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

[40] Negotiated Rate Filing at 20. The non-Merchant Owners will make their capacity available through their respective OATTs.

[41] *Id*. at 32.

40. With respect to Pattern Development, SunZia Transmission notes that neither it nor its Merchant Owners has entered into any legal arrangement that would serve to make Pattern Development an affiliate. However, as a precaution, SunZia Transmission states that it addresses concerns related to potential undue affiliate preference in its filings because the parties anticipate co-ownership of the Project.

41. SunZia Transmission asserts that its anchor tenant selection process was thorough and objective. SunZia Transmission states it did not offer more favorable rates, terms, or conditions to certain customers, such as "first movers" or those willing to take on greater project risk-sharing. SunZia Transmission affirms that all interested parties were treated comparably. It adds that, under its ranking, Pattern Development would be the "preferred" anchor customer even absent the sixth criterion (in which risk-sharing was included in the evaluation). SunZia Transmission argues that, even if Pattern Development was ranked highest due to the sixth criterion, this would not result in any undue preference concerns unless the criterion was applied in an unduly discriminatory or preferential manner to favor one applicant over another. SunZia Transmission commits that, if a precedent agreement and eventual Transmission Service Agreement with Pattern Development materializes, all customers and competitors will have an opportunity to comment on these agreements before they go into effect.[42]

b. <u>Commission Determination</u>

42. In order to ensure that service on merchant transmission projects will not result in any undue preference to any particular entity, the Commission examines situations where the merchant transmission developer is affiliated with the anchor customer, the open season participants, and/or customers that subsequently take service on the merchant transmission line to ensure that there is sufficient transparency, openness, and other protections in place to preclude unduly preferential treatment.[43]

43. We find here that SunZia Transmission's selection process was transparent, and not preferential neither toward Pattern Development nor unduly discriminatory against other potential customers. Notably, SunZia Transmission has demonstrated that all interested parties were treated comparably, provided with the same information, and given opportunities to discuss the Project with SunZia Transmission.

44. Specifically, while the first five criteria of the Anchor Tenant Criteria were circulated to interested parties by request, the sixth criterion was circulated separately. SunZia Transmission explains that, in response to its broad marketing effort in May and June of 2016, SunZia Transmission conducted discussions in person or by telephone

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[42] Selection Report Filing at 32.

[43] *Tres Amigas*, 130 FERC ¶ 61,207 at P 91; *Chinook*, 126 FERC ¶ 61,134 at P 48.

with seven interested parties. During these discussions with potential customers, SunZia Transmission reports that two interested parties, including Pattern Development, expressed interest in potential risk sharing, including co-ownership of the Project and wind generation projects. SunZia Transmission states that it sent indicative term sheets for a risk-sharing opportunity to Pattern Development and another interested party on June 10, 2016 and June 28, 2016, respectively. SunZia Transmission asserts that, in order to ensure that all potential applicants received comparable treatment, on August 18, 2016, it communicated the risk-sharing option by email to all four entities that had applied to be anchor customers, and specifically requested that each state its interest in risk-sharing and identify any applicable proposal.[44]

45. Furthermore, we find that SunZia Transmission has demonstrated through its Selection Report that Pattern Development was selected based on transparent, objective criteria that were used to rank all prospective customers. In its Selection Report, SunZia Transmission notes that, while risk-sharing was considered in its evaluation, it was not determinative, as SunZia Transmission considered it more important to select an applicant that was able to develop a generation project, secure Power Purchase Agreements, and build and commence operations synchronously with the Project.[45] We also note that no other entity has alleged that any undue preference occurred. Accordingly, we find that SunZia Transmission has satisfied the third factor regarding undue preference and affiliate concerns. We also grant SunZia Transmission's request to offer disparate terms and conditions to potential customers, consistent with the Policy Statement.[46]

4. <u>Factor Four: Regional Reliability and Operational Efficiency</u>

46. In order to ensure regional reliability and operational efficiency, the Commission expects that any merchant transmission projects connected to an RTO or ISO turn over operational control to the RTO/ISO. Merchant transmission projects, like cost-based transmission projects, are subject to mandatory reliability requirements.[47] Merchant

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[44] Selection Report Filing at 34.

[45] *Id*. at 34-35.

[46] Policy Statement, 142 FERC ¶ 61,038 at P 28. Because capacity allocation for the second Phase of the Project is not before us, we note that the results of any future open season must be filed with the Commission. *See* Selection Report at 1 and Negotiated Rate Filing at 8.

[47] *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, FERC Stats. & Regs. ¶ 31,204, *order on*

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. SunZia Transmission's Proposal

47. SunZia Transmission commits to comply with all applicable NERC and Western Electricity Coordinating Council (WECC) reliability requirements and procedures and to ensure regional reliability and operational efficiency of the Project. Of note, SunZia Transmission states that, in January 2014, it completed a second evaluation under the study protocols of WECC's Three-Phase Rating Process, previously completed in March 2011, and reaffirmed the 3,000 MW rating for two 500 kV AC transmission lines and related substations.

48. SunZia Transmission also states that it will continue to participate in the WestConnect regional transmission planning process as a member of the Planning Management Committee (PMC), and as a member of the PMC's Planning and Cost Allocation Subcommittees, and will continue to participate in the activities of the Southwest Area Transmission Planning Group (SWAT).[48]

b. Commission Determination

49. The proposed Project is not located in a region with an RTO or ISO. However, we note that SunZia Transmission commits to comply with applicable NERC and regional entity/regional reliability council requirements and continue its participation in the WestConnect transmission planning process and SWAT. Based on these commitments, we find that SunZia Transmission has met the regional reliability and operational efficiency requirement.

5. Merchant Owner Affiliation

50. As noted above, SunZia Transmission requests that the Commission confirm its finding in the 2011 Order that the Merchant Owners of the Project are not affiliated by virtue of their joint investment in the Project.

51. Each of the owners of the Project continues to make investments in the Project in proportion their respective ownership share in the Project. SunZia Transmission has not presented any additional information in its filing to alter the Commission's determination in the 2011 Order. Therefore, we affirm that the SunZia Owners have ownership shares

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reh'g, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

[48] Negotiated Rate Filing at 33-34.

in the Project indirectly through SunZia Transmission, LLC in proportion to their *pro rata* investment in the Project, and find that the Merchant Owners of the Project are not affiliated by virtue of their joint investment in the Project.

The Commission orders:

(A) SunZia Transmission is hereby granted authority to sell transmission on the Project at negotiated rates, as discussed in the body of this order.

(B) SunZia Transmission's Selection Report is hereby accepted for filing, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.