

Energy

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FERC Opens Door to Merchant Transmission Line Development—Expands Opportunity to Bring Renewables to Market

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On February 19, 2009, the Federal Energy Regulatory Commission (“FERC” or “Commission”) approved negotiated rate proposals under Section 205 of the Federal Power Act for two merchant transmission projects that will each deliver 3,000 megawatts (“MW”) of electricity, primarily from wind-generation, from Montana and Wyoming to consumers in the Southwest. Chinook Power Transmission, et al., 126 FERC ¶ 61,134 (2009) (“Order”).

The Order’s rate authorizations for Chinook Power Transmission, LLC, and Zephyr Power Transmission, LLC (both indirect subsidiaries of TransCanada Corporation) for their respective proposals marks a shift in FERC policy that previously required such projects to conduct open seasons for the full capacity of the planned project. Now, for the first time, FERC has permitted merchant transmission developers to allow “anchor customers” (in this case, undisclosed wind developers) to pre-subscribe half of the capacity of the proposed electric transmission lines. To this end, the Commission noted, its decision squarely addresses the “chicken and egg” scenario that merchant transmission developers commonly face when “generators, purchasers, and transmission owners all wait for the other to commit money to a project before committing themselves.” The financial commitments made by pre-subscribers provides “crucial early support and certainty to merchant transmission developers, which enables them to gain the critical mass necessary to develop these projects,” FERC said.

The Order announces a refinement to the 10-criteria analysis that FERC previously applied to requests for negotiated rate authority by merchant transmission owners. Going forward, FERC will concentrate on just four factors in analyzing such applications: 1) the justness and reasonableness of rates; 2) the potential for undue discrimination; 3) the potential for undue preference (including affiliate preference); and 4) regional reliability and operating efficiency concerns. The refined criteria are intended to be more flexible, especially with respect to merchant transmission projects planned outside the footprint of an RTO or ISO. In addition to FERC’s adoption of the “anchor customer” concept, it is worth noting that the Order relieves these two merchant transmission providers—who are located outside of an RTO/ISO and do not have generation resources—from the obligation of providing network or ancillary services.

Allocating Transmission Rights to “Anchor Customers” Addresses Challenges that Merchant Transmission Developers Have Long Faced

Merchant transmission projects are distinguished from those planned by traditional public utilities in that such projects assume all the market risks, and have no captive pool of customers from which to recoup the project's costs. The Commission's new policy, which is similar to policies previously adopted for natural gas pipeline projects, reflects the current commercial realities confronting the electric industry and acknowledges that the financial commitments made by anchor customers prior to an open season provide crucial financial support for merchant projects.

By recognizing the financing challenges that merchant transmission and renewable developers face, FERC has now made it easier for these projects to get built. With an anchor customer (or customers) lined up, merchant transmission developers are more apt to move forward with their projects, as they do not bear all of the risk, which in turn provides renewable generators and developers much-needed financial certainty that these projects will ultimately get built.

The Order is but another indication that FERC will do what it can to facilitate the further development of electric transmission infrastructure—especially as a means to enhance the growth of renewable energy through the expansion of the country's transmission grid capacity.

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