

137 FERC ¶ 61,207
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Southern Cross Transmission LLC

Docket No. EL11-61-000

ORDER AUTHORIZING PROPOSAL

(Issued December 15, 2011)

1. On September 6, 2011, Southern Cross Transmission LLC (Southern Cross) filed a request for authorization to charge negotiated rates for transmission rights on a proposed high voltage direct current (HVDC) merchant transmission project (Project).¹ In this order, the Commission authorizes Southern Cross to charge negotiated rates for transmission rights on the Project, as discussed below.

I. Background

A. Applicant

2. Southern Cross is an affiliate of Pattern Energy Group LP (Pattern), which is an independent, fully-integrated energy company that develops, constructs, owns, and operates renewable energy projects and transmission assets throughout North America and Latin America. Pattern was formed in June 2009 by Riverstone Holdings LLC. Pattern, through its affiliates, owns and is developing wind generation projects throughout the country, including within the Electric Reliability Council of Texas, Inc. (ERCOT). Pattern has formed Pattern Power Marketing LLC (Pattern Power) to engage

¹ Commission precedent distinguishes merchant transmission projects from traditional public utilities in that the developers of merchant projects assume all of the market risk of a project and have no captive customers from which to recover the cost of the project. *See, e.g., Hudson Transmission Partners, LLC*, 135 FERC ¶ 61,104 (2011) (*Hudson Transmission*); *Champlain Hudson Power Express, Inc.*, 132 FERC ¶ 61,006 (2010) (*Champlain Hudson*); *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134 (2009) (*Chinook*).

in the aggregation of wind power supplies within ERCOT for resale to load serving entities. Pattern Power will be one of what are expected to be several entities within ERCOT that will utilize transmission capacity created by the Project to transact with load serving entities within the SERC Reliability Corporation (SERC) region.

B. Description of Project

3. The Project, as proposed by Southern Cross, is a 400-mile HVDC transmission line providing incremental, bidirectional transmission capacity of up to 3,000 MW between City of Garland (Garland), Texas, at the Texas/Louisiana border (Western Point of Interconnection), and one or more substations of load serving entities within SERC in Mississippi and Alabama (Eastern Point of Interconnection). Southern Cross anticipates that the western converter station, which will convert alternating current (AC) to direct current (DC), will be located in western Louisiana, a short distance from the Western Point of Interconnection. Southern Cross states that interconnection of the Project to ERCOT will require the construction by Oncor Electric Delivery Company (Oncor) of a switchyard near existing Oncor transmission lines in Rusk County, Texas. A yet-to-be-built AC transmission line of approximately 30 miles, to be owned by Garland, will be constructed to interconnect to the Oncor switchyard and run eastwards to the Texas/Louisiana border where the line will interconnect with the Project, the point of interconnection between Southern Cross and the ERCOT system. The Project's eastern converter station will be constructed at a site in eastern Mississippi where the electricity will be converted from DC to AC power for delivery over one or more existing substations of load serving entities in Mississippi and Alabama.²

C. Application

4. Southern Cross requests negotiated rate authority for the Project and approval of its plan for allocation of its transmission capacity, including the initial allocation of up to 1,500 MW of the Project capacity, which is 50 percent of the maximum expected capacity of the Project, through long-term negotiated transmission service agreements with one or more anchor tenants. The balance of the Project's capacity will be subscribed through an open season process. Southern Cross states that it believes the 3,000 MW of planned Project capacity is appropriately sized for the potential market between ERCOT and SERC, but notes that the transmission interconnection and related reliability studies needed in connection with the transmission planning for the Project within both ERCOT and SERC remain in progress and may not be complete until late 2011 at the earliest.

² Southern Cross Sept. 6, 2011 Petition for Declaratory Order at 7-8 (Southern Cross Filing).

Southern Cross states that the results of these studies could indicate the need to reduce the capacity of the Project in order to avoid prohibitively expensive network upgrades.³

5. Southern Cross states that it is important to undertake negotiations with potential anchor customers during pendency of the studies, potentially resulting in a situation where Southern Cross has entered into binding contracts with anchor tenants for less than 1,500 MW but greater than 50 percent of the final capacity of the Project. To ensure a robust open season in these circumstances, Southern Cross commits to structure its anchor tenant agreements to ensure that the open season will be held for no less than 25 percent of the final capacity of the Project.⁴

6. Southern Cross states that, because the Project will be located in an area where there is currently no regional transmission organization (RTO) or independent system operator (ISO) to which Southern Cross can transfer operational control, Southern Cross intends to retain operational responsibility for the Project and will file an open access transmission tariff (OATT) with the Commission no later than one year prior to commercial operation of the Project.⁵

7. Southern Cross contends that it meets the four factor analysis as outlined in *Chinook* for approval of negotiated rate authority,⁶ as discussed more fully below. Southern Cross states that certainty with respect to the cost recovery methodology will permit it to commence anchor tenant negotiations and structure its open season solicitation and allow the Project to meet permitting, financing, and construction schedules.⁷

II. Notice, Intervention, and Responsive Pleadings

8. Notice of Southern Cross's Filing was published in the *Federal Register*, 76 Fed. Reg. 58,806 (2011), with interventions, comments and/or protests due on or before October 6, 2011. On September 27, 2011 the Public Utility Commission of Texas (Texas Commission) filed a request for an extension of time until October 21, 2011 to file comments. Notice of an extension of time was issued on September 28, 2011. On

³ *Id.* at 9-10.

⁴ Southern Cross Filing at 9-11.

⁵ *Id.* at 12-13.

⁶ *Chinook*, 126 FERC ¶ 61,134 at P 37-53.

⁷ Southern Cross Filing at 2.

October 19, 2011, the Texas Commission filed a request for an additional extension of time until November 4, 2011 to file comments. Notice of the second extension of time was issued on October 19, 2011.

9. The Texas Commission filed a notice of intervention. Timely motions to intervene were filed by Sharyland Utilities, L.P.; Calpine Corporation; Texas Industrial Energy Consumers (Texas Industrial Consumers); ERCOT; and CenterPoint Energy Houston Electric, LLC (CenterPoint). Texas Industrial Consumers also filed comments. On November 18, 2011, Southern Cross filed an answer to the comments of the Texas Industrial Consumers.

III. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Southern Cross's answer and will, therefore, reject it.

B. Ripeness for Consideration

12. Texas Industrial Consumers contend that Southern Cross's request is premature because it has not completed the transmission interconnection and related reliability studies yet. Texas Industrial Consumers argue that the Commission should reject Southern Cross's request to enter into binding anchor tenant agreements until such studies are completed and the project size is finalized.⁸ We disagree. We find that it is appropriate to authorize the sale of capacity on a merchant transmission project at negotiated rates during a project's development in order to assist the owners in securing financing.⁹ Thus, we find no basis to reject Southern Cross's request as premature.¹⁰

⁸ Texas Industrial Consumers Nov. 4, 2011 Comments at 2-3 (Texas Industrial Consumers Comments).

⁹ See *SunZia Transmission, LLC*, 135 FERC ¶ 61,169 (2011); *Tres Amigas LLC*, 130 FERC ¶ 61,207 (2010) (*Tres Amigas*) (approving requests for negotiated rate

(continued...)

C. Negotiated Rate Authority

13. In addressing requests for negotiated rate authority from merchant transmission providers, the Commission has demonstrated a commitment to fostering the development of such projects where reasonable and meaningful protections are in place to preserve open access principles and to ensure that the resulting rates for transmission service are just and reasonable.¹¹ The Commission's analysis for evaluating negotiated rate applications focuses on four areas of concern: (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 operational efficiency requirements.¹² This approach simultaneously acknowledges the financing realities faced by merchant transmission developers and the consumer protection mandates of the Federal Power Act (FPA) and the Commission's open access requirements. Moreover, this approach allows the Commission to use a consistent framework to evaluate requests

authority on merchant transmission projects before the final size of the project was confirmed).

¹⁰ Texas Industrial Customers also argue that the Commission should address the jurisdictional questions under consideration in Docket No. TX11-1-000 prior to determining whether to approve Southern Cross's request to presubscribe capacity at negotiated rates because the result of that docket could affect whether the Commission needs to address this one. The order in Docket No. TX11-1-000 is issuing concurrently with this order. In that order, the Commission directs the requested interconnection and transmission services pursuant to sections 210 and 211 of the FPA and affirms that the provision of such services will not affect the jurisdictional status of ERCOT or any ERCOT market participant that is not already a public utility under Part II of the FPA. In light of this fact, Texas Industrial Customers' request to defer consideration of the negotiated rate application is moot.

¹¹ See, e.g., *TransEnergie U.S., Ltd.*, 91 FERC ¶ 61,230, at 61,838-39 (2000) (accepting a request to charge negotiated rates on a merchant transmission project, subject to conditions addressing, among other things, the merchant's open season proposal); *Mountain States Transmission Intertie, LLC*, 127 FERC ¶ 61,270 (2009) (denying a request to charge negotiated rates on a merchant transmission project because, among other things, sufficient protections did not exist to ensure that rates for service would be just and reasonable); *Hudson Transmission*, 135 FERC ¶ 61,104 (authorizing Hudson Transmission to charge negotiated rates for transmission service).

¹² *Chinook*, 126 FERC ¶ 61,134 at P 37.

for negotiated rate authority from a wide range of merchant projects that can differ substantially from one project to the next.

1. **Four-factor Analysis**

a. **Just and Reasonable Rates**

14. To approve negotiated rates for a transmission project, the Commission must find that the rates are just and reasonable.¹³ 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 must determine whether the project is being built within the footprint of the merchant transmission owner's (or an affiliate's) traditionally regulated transmission system; if so, the Commission must determine that there are no captive customers who 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 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.

i. **Southern Cross's Proposal**

15. Southern Cross affirms that it will assume full market risk of the Project and that it will have no captive customers. Southern Cross states that it is a new market entrant and neither it nor any of its affiliates owns or operates any existing electric transmission facilities within either ERCOT or SERC, the two regions to be served by the Project. Southern Cross states that it will operate the Project pursuant to an OATT, to be filed with the Commission no later than one year prior to the commercial operation of the Project. Southern Cross asserts that use of an OATT will prevent it from exercising market power or erecting barriers to entry in the region where the Project will operate.¹⁴

16. Southern Cross provides several additional assurances as to why the rates charged to anchor tenants will be just and reasonable. First, Southern Cross observes that incumbent transmission owners within the SERC region have an obligation to expand their transmission capacity, upon request, at cost-based rates. Thus, Southern Cross contends that no entity will purchase transmission service from Southern Cross unless it

¹³ See *Champlain Hudson*, 132 FERC ¶ 61,006 at P 17.

¹⁴ Southern Cross Filing at 11-12.

is cost-effective to do so when compared to the cost of expanding capacity by incumbent transmission owners. In addition, Southern Cross states that the Commission has recognized that negotiated rates for service over merchant transmission lines are effectively capped at the differential in power prices between markets at either end of the line.¹⁵ Finally, Southern Cross asserts that the anchor customers that are likely to subscribe to the Project are sophisticated market participants that would only secure transmission service at competitive rates.¹⁶

ii. Commission Determination

17. The Commission concludes that Southern Cross's request for authority to charge negotiated rates for service on the Project is just and reasonable. Southern Cross meets the definition of a merchant transmission owner because it assumes all market risk associated with the Project and has no captive customers. Southern Cross has agreed to bear the risk that the Project will succeed or fail based on whether a market exists for its services. Southern Cross also has no ability to pass on any costs to captive ratepayers.

18. No entity on either end of the Project is required to purchase transmission service from Southern Cross, and customers will do so only if it is cost-effective. As Southern Cross points out, the Commission has recognized that negotiated rates for service over merchant transmission projects are effectively capped at the differential in power prices between markets at either end of the project.¹⁷ Another disciplining force on the negotiated rates that Southern Cross will be able to charge is the cost of expansion on neighboring utilities. Pursuant to their OATTs, public utilities have an obligation to expand their transmission capacity upon request, at cost-based rates.¹⁸ Therefore, the cost of expansion provides additional downward pressure on the negotiated rates that Southern Cross will charge. Additionally, because neither Southern Cross nor its affiliates own any transmission facilities within ERCOT or SERC, Southern Cross has no

¹⁵ *Id.* at 13 (citing *Hudson Transmission*, 135 FERC ¶ 61,104 at P 20; *Tres Amigas*, 130 FERC ¶ 61,207 at P 64).

¹⁶ *Id.*

¹⁷ *E.g.*, *Tres Amigas*, 130 FERC ¶ 61,207 at P 64.

¹⁸ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, at P 814, 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).

ability to erect barriers to entry or exercise market power in the relevant markets. Accordingly, these factors lead us to conclude that the requested negotiated rate authority is just and reasonable for service on the Project.

b. Undue Discrimination

19. As explained in *Chinook*, the Commission primarily looks 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 RTO/ ISO context, its commitment to turn operational control over to the RTO or ISO).¹⁹ The Commission requires merchant transmission owners to file reports on the open season results shortly after the close of the open season. Such reports provide transparency to the allocation of initial transmission rights, as well as the basis for an entity to file a complaint if it believes it was treated in an unduly discriminatory manner.²⁰

i. Southern Cross's Proposal

(a) Presubscription of Capacity

20. Southern Cross asserts that there is good reason to grant its request for authority to presubscribe up to 1,500 MW, or 50 percent of the maximum planned capacity, stating that in no event will less than 25 percent of the final capacity of the Project will be made available in the open season. In support, Southern Cross contends that, in order for equity investors to remain committed to the Project, it must demonstrate that it can timely secure the long-term contracts needed for the Project. Southern Cross asserts that the only mechanism for achieving this objective is the execution of bilaterally negotiated contracts. Southern Cross argues that without this authority the Project will be subject to unacceptable levels of risk for private investors.²¹

21. Southern Cross states that it will develop objective criteria, such as a minimum credit requirement, the willingness to post performance security, the willingness to

¹⁹ *Chinook*, 126 FERC ¶ 61,134 at P 40.

²⁰ See *Montana Alberta Tie, Ltd.*, 116 FERC ¶ 61,071, at P 37 (2006) (“[T]he 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.”).

²¹ Southern Cross Filing at 18-19.

commit to capacity allocation for a minimum term and/or a willingness to fund upfront development costs that potential subscribers must meet to be eligible as an anchor tenant. Southern Cross states that whatever capacity is not committed to anchor tenants, but no less than 25 percent of the final capacity of the Project, will be made available through an open season auction.²² Southern Cross requests that the capacity allocated to anchor tenants not be subject to any *pro-rata* reduction based on the results of the open season auction unless the anchor tenant expressly agrees for such pro-ration in its negotiated transmission service agreement.²³

22. Southern Cross contends that the potential anchor customers with load sufficient to support substantial long-term capacity purchase agreements are relatively easy to identify because electric service in the southeastern United States is supplied primarily by large vertically-integrated utilities. As such, Southern Cross contends that, as a practical matter, it would be inefficient and cause unnecessary delay to require it to hold only an open season when only a limited number of potential customers will likely agree to the needed long-term contracts.²⁴

23. Moreover, Southern Cross commits to offering the same rates, terms, and conditions given to anchor customers to any open season participant willing to purchase transmission capacity for the same term.²⁵ Southern Cross also states that to ensure transparency, the specific rules of the open season, detailed guidelines, estimated rates, and proposed form of service agreements will be posted on an internet website and forwarded to interested parties. Southern Cross asserts that it will also provide public notice of the open season in appropriate trade publications. Southern Cross states that the results of the open season auction will be posted on its website. Southern Cross also states that it will retain an independent third party consultant to conduct and evaluate the

²² *Id.* at 19.

²³ *Id.* at 15-16.

²⁴ *Id.* at 19-20.

²⁵ Southern Cross notes that the Commission is reconsidering in Docket No. AD11-11-000 the requirement that open season participants receive the same transmission rate that anchor tenants are able to negotiate. Southern Cross states that, if the Commission revises this policy, Southern Cross may seek authorization to implement any revised policy in its open season. *Id.* at n.24.

open season bids, then provide the consultant's report to the Commission within thirty days after the close of the open season.²⁶

(b) **OATT Commitments**

24. As previously discussed, the Project will be located in an area where there is currently no RTO or ISO. Thus, Southern Cross states that it intends to retain operational responsibility for the Project and will file with the Commission an OATT, consistent with Order No. 890, that provides for non-discriminatory, open access service, including tradable firm secondary transmission rights. Southern Cross commits to filing its OATT no later than one year prior to commercial operation of the Project.²⁷

ii. **Comments**

25. Texas Industrial Consumers argue that the Commission should reject Southern Cross's request to enter into binding anchor tenant agreements until all of the interconnection studies are completed and the size of the project is known. Texas Industrial Consumers assert that until the final capacity of the Project is known, the Commission cannot make an informed evaluation of whether selling as little as 25 percent of the project's capacity would create artificial scarcity or result in undue discrimination. Texas Industrial Consumers recommend that the Commission require Southern Cross to offer an open season for at least 50 percent of the final capacity of the Project, regardless of whether that amount is less than the anticipated 3,000 MW. Additionally, Texas Industrial Consumers request that the Commission direct Southern Cross to make a filing with the Commission pursuant to section 205 of the FPA²⁸ seeking authorization for each of the anchor tenant transactions.²⁹

iii. **Commission Determination**

26. The Commission looks specifically at the merchant transmission owner's open season and OATT commitments in determining whether negotiated rate authority could lead to undue discrimination on a particular merchant transmission project. As the

²⁶ *Id.* at 14-15.

²⁷ *Id.* at 12-13.

²⁸ 16 U.S.C. § 824d (2006).

²⁹ Texas Industrial Consumers Comments at 2-3, 6 (citing *Tres Amigas*, 130 FERC ¶ 61,207 at P 61).

Commission explained in *Chinook*, we evaluate proposals to allocate all or a portion of initial capacity outside of an open season on a case-by-case basis.³⁰

27. In *Champlain Hudson*, the Commission re-affirmed its commitment to fostering the development of merchant transmission projects through the adoption of a more flexible approach to negotiated rate applications that allows for the allocations of certain capacity to anchor customers, acknowledging the financing realities faced by developers while carrying out the consumer protection mandates of the FPA and the Commission's open access requirements.³¹ The financial commitments made by anchor customers prior to an open season can provide crucial early support and certainty to merchant developers.

28. The Commission agrees with Southern Cross that its proposal is consistent with *Chinook* and should not lead to undue discrimination, and will accept Southern Cross's proposal to seek at least 50 percent, and potentially up to 75 percent, presubscription of transmission capacity on the project to anchor customers. As Southern Cross points out, it must secure long-term commitments from creditworthy anchor customers to support financing the Project. Additionally, we find that the Project is in the public interest because it will create a new transmission path and new markets for Texas wind generators. The Project will also benefit consumers by allowing for the transmission of power from wind farms in Texas into the southeastern United States. In addition, because the Project will be a bi-directional line, it has the potential to provide both economic and reliability benefits in both regions. We have approved similar requests to allocate capacity to anchor customers in the past in light of the difficulties in financing merchant transmission projects.³² Additionally, Southern Cross has committed to offer at least 25 percent of the Project's capacity in the open season. Therefore, given the specifics of the Project and the facts and commitments presented in the application, we find Southern Cross's proposal to seek up to 75 percent presubscription from anchor customers to be reasonable.

29. Consistent with Commission precedent, we will condition acceptance of Southern Cross's request on Southern Cross making an informational filing with the Commission for any anchor customer transaction describing the terms of the agreement and the

³⁰ *Chinook*, 126 FERC ¶ 61,134 at P 42.

³¹ *Champlain Hudson*, 132 FERC ¶ 61,006 at P 16.

³² See, e.g., *Chinook*, 126 FERC ¶ 61,134 at P 60-63 (approving *Chinook*'s presubscription of up to 50 percent of the project capacity to anchor customers); see also *Champlain Hudson* at P 47 (approving *Champlain Hudson*'s proposal to seek up to 75 percent presubscription from anchor customers).

relevant facts and circumstances leading to the agreements no later than 30 days after the end of the open season.³³ In light of this reporting requirement, we find Texas Industrial Consumers' request to require Southern Cross to seek prior authorization for each anchor tenant transaction via a section 205 filing to be unnecessary. Texas Industrial Consumers provide no explanation as to why they see a need for individual section 205 filings. Thus, we are not convinced that the informational filings we typically require provide insufficient transparency to alleviate Texas Industrial Consumers' concerns regarding undue discrimination.

30. We also approve Southern Cross's request to sell the remaining capacity, ranging between 25 and 50 percent, using an open season auction, subject to the submission of informational reports.³⁴ As stated in *Chinook* and *Hudson Transmission*, open seasons must be fair, transparent, and non-discriminatory, and we will continue to require open season reports to be filed with the Commission shortly after the close of the open season.³⁵ The reports must include, at the very least, the terms of the open season (including notice of the open season and the method for evaluating bids), the identity of the parties that purchased capacity, and the amount, term, and price of the capacity. This open season reporting requirement and the process by which parties are afforded an opportunity to file complaints will continue to be the primary tools by which the Commission ensures that merchant transmission developers do not unduly discriminate.³⁶ The open season informational report should be filed within 30 days of the open season.

31. Once the Project has commenced operation, Southern Cross must file the same information that the Commission required in *Chinook*, specifically: (1) books and records for the Project will comply with the Uniform System of Accounts in Part 101 of the Commission's regulations,³⁷ and will be subject to examination as required in Part 41 of the regulations,³⁸ (2) Southern Cross will file financial statements and reports in

³³ *Champlain Hudson*, 132 FERC ¶ 61,006 at P 44; *Hudson Transmission*, 135 FERC ¶ 61,104 at P 29.

³⁴ Southern Cross Filing at 15-16.

³⁵ *Chinook*, 126 FERC ¶ 61,134 at P 41; *Hudson Transmission*, 135 FERC ¶ 61,104 at P 30.

³⁶ *Chinook*, 126 FERC ¶ 61,134 at P 41; *Champlain Hudson*, 132 FERC ¶ 61,006 at P 45; *Hudson Transmission*, 135 FERC ¶ 61,104 at P 30.

³⁷ 18 C.F.R. Part 101 (2011).

³⁸ *Id.* Part 41.

accordance with Part 141 of the Commission's regulations;³⁹ and (3) Southern Cross's books and records must be audited by an independent auditor.⁴⁰ These commitments will assist the Commission in carrying out its oversight role.

32. Consistent with its commitment, Southern Cross must also file an OATT that adheres to the *pro forma* OATT in Order No. 890 no later than one year 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 be sure Southern Cross will provide open and non-discriminatory service on its Project.

c. Undue Preference and Affiliate Concerns

33. In the context of merchant transmission, our concerns regarding the potential for affiliate abuse arise when the merchant transmission owner is affiliated with either the anchor customer, participants in the open season, and/or customers that subsequently take service on the merchant transmission line.

i. Southern Cross's Proposal

34. Southern Cross states that its affiliate, Pattern, has other affiliates that own wind generation within ERCOT that could elect to bid into the open season. In addition, before the Project becomes operational, Southern Cross states that Pattern will form Pattern Power to undertake the aggregation of wind power supplies within ERCOT for sale to load serving entities within SERC utilizing the Project's capacity. Southern Cross proposes safeguards that it submits will eliminate any potential for affiliate abuse. Southern Cross pledges that no affiliate will be an anchor tenant for capacity on the Project. In the event that a Pattern affiliate elects to participate in the open season, Southern Cross states that it will file a post-open season report with the Commission, maintain separate books of account and records in accordance with the Commission's regulations, file an OATT under which any affiliate transactions will be conducted, file electric quarterly reports, and use an independent consultant to evaluate open season bids. Southern Cross also states that it will comply with all applicable affiliate rules and will be subject to the Commission's Standards of Conduct to the extent that any affiliate contracts for transmission service over the Project. Further, with respect to the marketing of capacity to anchor tenants, Southern Cross states that it will make clear that

³⁹ *Id.* Part 141.

⁴⁰ *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.

availability of capacity on the Project is in no way tied to the purchase of wind generation from a Pattern affiliate.⁴¹

ii. Comments

35. Texas Industrial Consumers urge the Commission to adopt the commitments made by Southern Cross and to expand Southern Cross's commitment regarding affiliate transactions to require that no Southern Cross affiliate will receive any preferential treatment from any anchor tenant on the Project.⁴²

iii. Commission Determination

36. In light of the commitments made in the application, we find that Southern Cross adequately addresses any affiliate concerns present at this early stage of the Project. Furthermore, we note that Southern Cross commits to comply with the Standards of Conduct and file electric quarterly reports of its transactions as required of transmission providers.⁴³ Moreover, as discussed above, the commitments made by Southern Cross regarding the open season process and reporting requirements will ensure that all transactions are transparent and arms length. With respect to Texas Industrial Consumers' request that the Commission require that no Southern Cross affiliate receive any preferential treatment from any anchor tenant, we find that such restrictions on are not necessary.

d. Regional Reliability and Operational Efficiency

37. Merchant transmission projects, like cost-based transmission projects, are subject to mandatory reliability requirements.⁴⁴ 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 with they are located.

⁴¹ Southern Cross Filing at 16-17.

⁴² Texas Industrial Consumers Comments at 6.

⁴³ 18 C.F.R. § 35.10(b) (2011); *see also* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 817; Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 394.

⁴⁴ *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 reh'g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

i. Southern Cross's Proposal

38. Southern Cross states that it will comply with applicable reliability requirements and procedures of NERC and SERC. Southern Cross states that it has submitted the Project for evaluation in conjunction with the ERCOT transmission planning process. In addition, Southern Cross reports that it has formally proposed the Project to the transmission planning groups of the Tennessee Valley Authority, the Southern Company, and Entergy, and those groups are working cooperatively with Southern Cross to undertake the necessary reliability studies within the SERC region.⁴⁵

ii. Comments

39. Texas Industrial Consumers argue that the proposal does not meet the *Chinook* reliability requirements because Southern Cross is not required to sell unidirectional capacity from SERC to ERCOT, creating the potential for increased scarcity and higher prices during peak times within ERCOT, but no corresponding reliability benefits resulting from imports of power from SERC resources. Texas Industrial Consumers further contend that Southern Cross's claim that the Project will improve reliability and bring economic benefits to ERCOT and SERC is speculative and undefined. Accordingly, Texas Industrial Consumers urge the Commission to require that Southern Cross sell at least 50 percent of the SERC to ERCOT unidirectional capacity to ensure that ERCOT consumers realize benefits from the Project.⁴⁶

iii. Commission Determination

40. Southern Cross commits to filing an OATT for service on the Project and complying with applicable NERC and SERC reliability requirements. Additionally, Southern Cross indicates that it has already entered into the ERCOT transmission planning process and continues to work with entities in the SERC region to do the appropriate reliability planning. Accordingly, we find that Southern Cross has met the regional reliability and operational efficiency requirement subject to Southern Cross's continued participation in the necessary regional planning processes.

41. With regard to Texas Industrial Consumers' request that we require that Southern Cross sell at least 50 percent of the SERC to ERCOT unidirectional capacity, we find that this request is beyond the scope of the Commission's authority. Our authorization of Southern Cross's request to sell transmission rights on the Project at negotiated rates is

⁴⁵ Southern Cross Filing at 17-18.

⁴⁶ Texas Industrial Consumers Comments at 3-5.

based, at least in part, on the fact that Southern Cross is assuming the entire financial risk of the Project. Southern Cross will provide transmission service on the Project pursuant to an OATT that will be filed with the Commission. One of the obligations under the OATT is posting available capacity on an open access same-time information system website. Thus, although the Commission cannot compel any specific purchases or sales of capacity, the posting requirement will ensure that Southern Cross does not withhold capacity or engage in discriminatory sales of the Project's capacity, unidirectional or otherwise. Moreover, a showing of commensurate benefits is not required under the *Chinook* evaluation.⁴⁷ Rather, the Commission's concern focuses on the possibility that merchant transmission developers may jeopardize the safety and reliability of the grid. As discussed above, Southern Cross commits to complying with applicable reliability requirements and working with the relevant regional transmission planners. Thus, we find that Texas Industrial Consumers concerns about reliability impacts are unfounded.

42. We also find no merit in Texas Industrial Consumers' concerns about economic impacts. The bald assertion that prices may rise during peak demand periods does not, in itself, persuade us that the Project fails to satisfy the *Chinook* factors.

The Commission orders:

(A) Southern Cross is hereby granted authority to sell transmission rights on its proposed merchant transmission project at negotiated rates, subject to conditions, as discussed in the body of this order.

(B) Southern Cross is hereby directed to file with the Commission a report describing the terms of the anchor tenant agreements and the results of any open season within 30 days after the end of the open season, as discussed in the body of this order.

(C) Southern Cross is hereby directed to file its OATT no later than one year prior to start of commercial operations, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose
Secretary.

⁴⁷ See *Chinook*, 126 FERC ¶ 61,134 at P 52-53.