

172 FERC ¶ 61,086
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

SOO Green HVDC Link ProjectCo, LLC

Docket No. ER20-1665-000

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

(Issued July 23, 2020)

1. On April 27, 2020, SOO Green HVDC Link ProjectCo, LLC (SOO Green) submitted a request for Commission authorization to charge negotiated rates for transmission rights on a proposed high-voltage direct current (HVDC) merchant transmission project, known as the SOO Green Project (Project), that will connect the Midcontinent Independent System Operator, Inc. (MISO) and PJM Interconnection, L.L.C. (PJM) systems.¹ In this order, we authorize SOO Green to charge negotiated rates for transmission rights on the Project, subject to its submission of a compliance filing after its open solicitation, as discussed below. We also grant SOO Green's request for waivers of certain Commission requirements.

I. Background

A. Applicant

2. SOO Green states that it is a limited liability company organized and existing pursuant to the laws of Delaware for the purpose of developing, financing, and constructing the Project. SOO Green states that it will be an independent merchant transmission company and not a generator or a load serving entity (LSE). SOO Green states that it does not own or operate any existing electric generation or transmission

¹ Under the Commission's precedent, merchant transmission projects differ from those of traditional public utilities in that the developers of merchant transmission projects assume the full market risk of a project and have no captive customers from which to recover the cost of the project. Thus, on a case-by-case basis, the Commission has allowed merchant transmission projects to charge negotiated rates and has granted waivers of certain requirements. See, e.g., *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134 (2009) (*Chinook*).

facilities, nor will it own or operate any transmission projects or assets other than the Project. Further, SOO Green notes that it is not a buyer or seller of power in any market.²

3. SOO Green explains that it is owned 80% by Copenhagen Infrastructure III K/S (CI III), 10% by Jingoli Power Transmission, LLC (Jingoli), and 10% by Siemens Energy, Inc. According to SOO Green, none of its owners or their affiliates own any transmission facilities, except for generation interconnection facilities. SOO Green states that none of the SOO Green owners or their affiliates own any generation facilities in MISO, with one immaterial exception: a Jingoli affiliate owns less than 10% of a small cogeneration facility in Michigan. Further, SOO Green states that none of the SOO Green owners or their affiliates own any generation facilities in the Illinois and Ohio portions of PJM, except for an affiliate of Siemens Energy, Inc., which holds a minority interest in a combined-cycle generation facility near Cleveland, Ohio. SOO Green argues that, even with the above-noted exceptions, no affiliated transmission or generation facility is located in the Iowa portion of MISO or the Illinois portion of PJM, which SOO Green asserts is the relevant market area.³

B. Project Description

4. SOO Green states that the Project will be capable of bi-directionally transmitting up to 2,100 MW of capacity and energy on a 350-mile, HVDC transmission line connecting MISO and PJM. The Project will connect with MISO's 345 kV transmission system at a point near Mason City, Iowa and PJM's 345 kV transmission system at a point near Plano, Illinois. SOO Green states that 99% of the transmission line will be installed underground. SOO Green also states that, as currently designed, the Project will consist of the following three components: (1) an HVDC converter station, featuring state-of-the-art voltage source converter (VSC) technology that will convert alternating current (AC) power from MISO's 345 kV transmission system into direct current (DC) output for transmission; (2) a 350-mile, HVDC transmission line; and (3) an AC converter station (also utilizing VSC technology) that will convert the DC power into AC power for transmission on PJM's 345 kV transmission system and beyond.⁴ SOO Green asserts that following a development phase (anticipated to conclude in 2021) and a three-year construction phase, the Project is expected to be operational in late 2024.⁵

² SOO Green Filing at 2.

³ *Id.* at 3.

⁴ *Id.* at 6.

⁵ *Id.* at 7.

5. SOO Green asserts that the Project will provide significant benefits to MISO, PJM, and others. For example, SOO Green states that the Project will reinforce the transmission grid between the regional transmission operators (RTO) by creating an inter-RTO “backbone” transmission facility linking the transmission systems operated by MISO and PJM, as well as increase the transfer capacity on the existing grid.⁶ Second, SOO Green states that the Project will offer compelling market opportunities via a more direct, efficient, and controllable path for energy and capacity to flow between the two systems, which should facilitate price convergence between the regions and make each market more efficient. Third, SOO Green states that the Project will connect to a strong point on the MISO system, allowing it to draw energy and capacity from different generation resources across the entire region. Lastly, SOO Green states that the Project’s use of VSC technology will promote reliability and enhance the system stability of each RTO’s AC network.⁷

6. SOO Green states that, consistent with the Commission’s established requirements for negotiated rate authority, SOO Green intends, before commencement of commercial operation, to transfer operational control of the Project to an RTO, either MISO or PJM. SOO Green states that while it is currently in discussions with both MISO and PJM about the many operational issues involving the Project, it is unclear at this juncture which RTO will ultimately have operational control of the Project.⁸

C. Application

7. SOO Green seeks authorization to charge negotiated rates for the Project. SOO Green states that it has retained London Economics International, LLC to design an open solicitation process and serve as its independent evaluator. SOO Green states that after receiving negotiated rate authorization, SOO Green, in conjunction with the independent evaluator, will broadly distribute a notice to commence the open solicitation process.⁹

8. SOO Green states that the open solicitation notice is intended to attract various market participants (e.g., generators, marketers, load-serving entities, and end-users) to an internet platform where they can become “registered participants” by expressing interest in obtaining transmission capacity rights, either as anchor shippers (first movers) or later through an auction. SOO Green notes that “registered participants” may explore commercial arrangements to support their auction bids on their own or ask to be matched

⁶ *Id.* at 7.

⁷ *Id.* at 9.

⁸ *Id.*

⁹ *Id.* at 11-12.

with other registered participants by the independent evaluator. SOO Green states that, after the transmission capacity rights have been allocated, SOO Green will submit a compliance filing demonstrating that the allocation process was not only fair and transparent, but also consistent with the Commission's 2013 Policy Statement.¹⁰

9. SOO Green also requests waiver of certain Commission regulations and reporting requirements, as discussed below.¹¹

II. Notice and Intervention

10. Notice of SOO Green's filing was published in the *Federal Register*, 85 Fed. Reg. 26,455 (May 4, 2020), with interventions and protests due on or before May 18, 2020. None was filed.

III. Discussion

A. Negotiated Rate Authority

11. In evaluating negotiated rate applications, the Commission employs a four-factor analysis, as 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.¹² 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 Federal Power Act (FPA),¹³ 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.

¹⁰ *Id.* at 26 (citing *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)).

¹¹ *Id.* at 1, 17-19.

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

¹³ 16 U.S.C. §§ 791a, *et seq.* (2018).

1. Factor One: Just and Reasonable Rates

12. To approve negotiated rates for a transmission project, the Commission must find that the rates are just and reasonable.¹⁴ 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 owns 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.¹⁵

a. SOO Green's Proposal

13. SOO Green represents that it has no captive customers and will assume all market risks for the Project. Furthermore, SOO Green states that it is a new market entrant that does not own or operate any existing transmission facilities in MISO or PJM. Moreover, SOO Green states that its ownership structure has no affiliate that owns or operates facilities in those markets, with the exception of Jingoli's affiliate, which owns less than 10% of a small cogeneration facility in Michigan, and an affiliate of Siemens Energy, Inc., which owns a minority interest in a combined cycle generation facility near Cleveland, Ohio.¹⁶ SOO Green states that because it does not have captive customers, no entity will be required to purchase transmission capacity rights from SOO Green or pay the costs of the project. SOO Green further states that before commercial operations commence, it intends to turn over operational control of the Project to an RTO, which will operate the Project under its open access transmission tariff (OATT). Furthermore, SOO Green states that anyone interested in obtaining the Project's transmission capacity rights will have other transmission alternatives; that is, they could seek service from MISO or PJM and, if need be, require incumbent transmission owners to expand their transmission capacity, upon request, at cost-based rates.¹⁷ Thus, SOO Green affirms that no one will purchase transmission capacity rights from SOO Green unless it is cost-

¹⁴ *Id.* § 824d(a) (2018); *Champlain Hudson Power Express, Inc.*, 132 FERC ¶ 61,006, at P 17 (2010).

¹⁵ *Chinook*, 126 FERC ¶ 61,134 at P 38.

¹⁶ SOO Green Filing at 3.

¹⁷ *Id.* at 15 (citing *Ne. Utils. Serv. Co.*, 127 FERC ¶ 61,179, at P 27 (2009)).

effective to do so when compared to the incumbent transmission owners' cost of expanding capacity.¹⁸

14. Additionally, SOO Green states that the Commission has recognized that the price differential between markets at either end of a merchant transmission line serves as a cap on a merchant transmission developer's ability to charge—and customers' willingness to pay—for transmission service on a given project, which effectively places a cap on rates for transmission service along the merchant transmission facility.¹⁹ SOO Green affirms that, in this case, the price differential between MISO and PJM markets provides an effective cap on SOO Green's rates.²⁰

15. Moreover, SOO Green states that it has no incentive to withhold transmission capacity rights on the Project, as the funds to pay for the construction of the Project will come from the sale of transmission capacity rights. SOO Green explains that, because the capital costs of the Project are not easily scalable, SOO Green has an incentive to sell all available transmission capacity rights.²¹

b. Commission Determination

16. Based on the information provided in its request for negotiated rate authority, we find that SOO Green's request for authorization to charge negotiated rates on the Project satisfies the first *Chinook* factor. SOO Green bears full market risk for the Project and has no captive customers.²² Further, SOO Green states that neither it nor its affiliates own or operate any generation or transmission facilities in MISO or PJM, with the exception of Jingoli's affiliate, which owns less than 10% of a small cogeneration facility in Michigan, and an affiliate of Siemens Energy, Inc., which owns a minority interest in a combined cycle generation facility near Cleveland, Ohio.²³ We find that these affiliations do not result in SOO Green being able to erect barriers to entry or having any incentive to withhold capacity in the MISO or PJM markets because SOO Green will turn over operational control of the completed Project to either MISO or PJM, which will operate

¹⁸ *Id.*

¹⁹ *Id.* (citing *Tres Amigas*, 130 FERC ¶ 61,207, at P 77 (2010) (*Tres Amigas*)).

²⁰ *Id.* at 15.

²¹ *Id.*

²² See *Linden VFT, LLC*, 119 FERC ¶ 61,066, at P 17 (2007).

²³ SOO Green Filing at 3.

the line pursuant to its respective OATT.²⁴ Additionally, no entity is required to purchase transmission service from SOO Green, and customers have the alternative of seeking service from MISO or PJM, or from an incumbent transmission owner at cost-based rates. We also agree with SOO Green that the price differential between MISO and PJM will effectively cap SOO Green's charges for service over the Project.²⁵ Accordingly, we find that SOO Green's Project satisfies the first factor of our analysis that the negotiated rates will be just and reasonable.

2. Factor Two: Undue Discrimination

17. 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 an RTO or an independent system operator (ISO), its commitment to turn over operational control to that regional entity).²⁶ 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.²⁷ 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.²⁸

18. 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

²⁴ See, e.g., *Hudson Transmission Partners, LLC*, 135 FERC ¶ 61,104, at P 19 (2011) (finding that the merchant transmission project has no ability to exercise market power or erect barriers to entry in the relevant markets where: (1) operational control of the project will be turned over to New York Independent System Operator, Inc. (NYISO) and the project will be operated pursuant to NYISO's OATT; and (2) operational control of an affiliated merchant transmission project has been turned over to PJM and that project is operated pursuant to PJM's OATT)).

²⁵ See *Tres Amigas*, 130 FERC ¶ 61,207 at P 77.

²⁶ *Chinook*, 126 FERC ¶ 61,134 at P 40.

²⁷ 2013 Policy Statement, 142 FERC ¶ 61,038 at PP 15, 23.

²⁸ *Id.* P 16.

magazines or regional energy publications.²⁹ 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).³⁰ 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.³¹

19. 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 205 of the FPA.³² 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 to provide transparency to the Commission and interested parties.³³

20. 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

²⁹ *Id.* P 23.

³⁰ *Id.* P 20.

³¹ *Id.* PP 24-27.

³² 16 U.S.C. § 824d (2018).

³³ 2013 Policy Statement, 142 FERC ¶ 61,038 at P 30.

or preferential, and resulted in rates, terms, and conditions that are just and reasonable.³⁴ 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, following Commission approval, can demonstrate in a compliance filing that the developer's selection of customers was consistent with the approved selection process.

a. SOO Green's Proposal

21. According to SOO Green, the open solicitation process will consist of six steps: (1) broad notice; (2) registration and "expression of interest"; (3) anchor shipper allocation; (4) voluntary matching; (5) auction allocation; and (6) compliance filing.³⁵

22. With regard to the broad notice, SOO Green states that the independent evaluator will develop, maintain, and monitor a website specifically dedicated to the open solicitation process for the Project.³⁶ SOO Green explains that in addition to the notice being posted on the website, it will be broadly circulated, including to energy trade publications and news outlets publishing within the MISO and PJM regions. Also, the open solicitation website will "go live" on or before the broad distribution of the notice for the open solicitation process.³⁷

23. SOO Green states that the notice will identify the website address developed by the independent evaluator for the open solicitation process, and the website will provide more detailed information about the Project.³⁸ SOO Green states that, together, the notice and website information will fully inform interested parties of the open solicitation process details, transmission capacity rights allocation rules, additional details regarding selection and ranking criteria (including justifications for each criteria), a confidentiality agreement, a pro forma precedent agreement (when available), and other documents, such as an informational memorandum that will explain the expected obligation of prospective customers. SOO Green notes that the independent evaluator will provide requested information to all interested parties and will respond to questions in an open and

³⁴ *Id.* P 32.

³⁵ SOO Green Filing at 13.

³⁶ *Id.* at 17.

³⁷ *Id.*

³⁸ *Id.* at 18.

transparent manner on the open solicitation website. SOO Green states that, consistent with Commission policy, any material changes to the nature of the Project or the status of the transmission capacity rights allocation process will be posted and time-stamped on the open solicitation website and distributed through email to ensure that interested parties are informed of any material changes in the open solicitation process including any remaining available transmission capacity rights.³⁹

24. With regard to registration, SOO Green states that the issuance of the notice will initiate a period of time during which interested market participants can register to participate in the open solicitation process, thereby becoming registered participants with greater access to the open solicitation website and additional Project information.⁴⁰ SOO Green indicates that registered participants will be given an opportunity to better understand the Project and perform any preliminary due diligence. Each registered participant will then be asked to submit an “expression of interest” indicating that it either (1) is ready to become an anchor shipper (i.e., first mover) by executing a binding precedent agreement for a desired amount of transmission capacity rights or, alternatively, (2) seeks additional time to explore and secure any necessary commercial arrangements for supply and demand before possibly participating in the capacity rights auction.⁴¹ SOO Green states that the registered participants that indicate that they are ready to become potential anchor shippers will need to meet minimum eligibility requirements (published in the open solicitation rules) and be willing to execute a binding precedent agreement. The independent evaluator will screen and rank the potential anchor shippers according to criteria previously endorsed by the Commission and published in the open solicitation rules. SOO Green will then conduct negotiations with the screened and ranked anchor shipper candidates. Any oversubscription of Project capacity rights would be resolved based on the ranking criteria. SOO Green explains that if all transmission capacity rights are allocated during this phase, the open solicitation process will end; if not, the process will proceed to the next phase (i.e., an auction for remaining capacity).⁴²

25. SOO Green explains that the registered participants that seek additional time to explore commercial arrangements before deciding to participate in the capacity rights auction, can, but are not required to, ask the independent evaluator to match them with

³⁹ *Id.*

⁴⁰ *Id.* at 19.

⁴¹ *Id.*

⁴² *Id.* at 20.

other registered participants interested in exploring commercial arrangements.⁴³ The independent evaluator will match registered participants on a range of parameters involving each participant's commercial interests (e.g., generation type and quantity of energy), but not price.⁴⁴ SOO Green states that the matching criteria and process will be published as part of the rules for the open solicitation process, so all registered participants will be aware of the terms and conditions under which the matching will occur. SOO Green states that it will not participate in the matching process.⁴⁵ SOO Green states that the matched participants will decide whether to engage with each other or move on to other possibilities. SOO Green asserts that neither the independent evaluator nor SOO Green will be involved with, or offer advice on, the price that may be considered in any ensuing commercial negotiations. After the matching phase, registered participants—including those that made any tailored commercial arrangements on their own or through bilateral negotiations following the optional matching process—can elect to participate in the transmission capacity rights auction following the selection of one or more anchor shippers.⁴⁶

26. SOO Green explains that after the matching process, the independent evaluator will conduct an auction to allocate any remaining transmission capacity rights to registered participants. SOO Green states that the auction will allow for the efficient and non-discriminatory allocation of transmission capacity rights, and that the starting price in the auction will be published in advance. The minimum eligibility requirements and factors for clearing the auction will be described in the rules posted on the open solicitation website.⁴⁷

27. SOO Green states that once all precedent agreements have been executed, the independent evaluator will post on the open solicitation website the names of each winning participant, as well as their respective allocated quantity of transmission capacity rights, the expiration date of the transmission capacity rights awarded, and the contact information of the participant for purposes of potential resale of the transmission capacity rights. The independent evaluator will prepare a report describing and disclosing the results of the transmission capacity rights allocation process. Additionally, SOO Green

⁴³ *Id.* at 19-20.

⁴⁴ *Id.* at 20.

⁴⁵ *Id.* at 21.

⁴⁶ *Id.* at 22.

⁴⁷ *Id.*

states that the solicitation report will be attached to SOO Green's FPA section 205 compliance filing that seeks final Commission approval of the open solicitation process.⁴⁸

28. Finally, SOO Green states that it will ensure that its books and records will comply with the Commission's Uniform System of Accounts in Part 101 of the Commission's regulations⁴⁹ and will be subject to examination as required in Part 41 of the regulations,⁵⁰ file financial statements and reports in accordance with sections 141.14–141.15 of the Commission's regulations,⁵¹ and employ an independent auditor to review its books and records. SOO Green states that its open solicitation process will prevent undue discrimination and, as such, this request for negotiated rate authority satisfies the second criterion of the Commission's four-factor analysis.⁵²

29. SOO Green states that consistent with the 2013 Policy Statement, SOO Green commits to submit, under section 205 of the FPA, a compliance filing to disclose the results of the open solicitation and transmission capacity rights allocation process. SOO Green states that the compliance filing will afford registered participants the opportunity to submit comments on the open solicitation process administered by the independent evaluator and ensure that the process (and the results) are consistent with the Commission's orders and 2013 Policy Statement.⁵³

b. Commission Determination

30. We acknowledge SOO Green's commitment to engage in an open solicitation and capacity allocation process consistent with the 2013 Policy Statement. We will reserve judgment on whether that open solicitation and capacity allocation process was not unduly discriminatory, pending SOO Green's subsequent compliance filing providing the details required by the 2013 Policy Statement to determine that the open solicitation and capacity allocation process was not unduly discriminatory.

31. We also acknowledge SOO Green's commitment that, consistent with *Chinook*, once the Project has commenced operation, SOO Green will: (1) ensure that the books

⁴⁸ *Id.*

⁴⁹ *Id.* at 23 (citing 18 C.F.R. Part 101 (2019)).

⁵⁰ *Id.* (citing 18 C.F.R. Part 41 (2019)).

⁵¹ *Id.* (citing 18 C.F.R. §§ 141.14 & 141.15 (2019)).

⁵² *Id.*

⁵³ *Id.* at 26-27.

and records for the Project will comply with the Uniform System of Accounts found in Part 101 of the Commission's regulations and will be subject to Commission examination as required in Part 41 of the Commission's regulations; and (2) employ an independent auditor to audit its books and records. These commitments will assist the Commission in carrying out its oversight role.

3. Factor Three: Undue Preference and Affiliate Concerns

32. 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 shipper, 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.⁵⁴

a. SOO Green's Proposal

33. SOO Green states that its proposal to charge negotiated rates for transmission capacity rights does not raise any undue preference or affiliate concerns because neither SOO Green nor its affiliates own or operate any generation or transmission facilities in MISO or PJM. However, SOO Green discloses that a Jingoli affiliate owns less than 10% of a small cogeneration facility in Michigan, and that an affiliate of Siemens Energy, Inc., owns a minority interest in a combined cycle generation facility near Cleveland, Ohio.⁵⁵ SOO Green affirms that, as such, the Project will not interconnect with any existing generation or transmission facilities owned or operated by SOO Green or any affiliate. Further, SOO Green asserts that it does not anticipate that any affiliate of SOO Green will participate in the open solicitation process or become an anchor shipper on the Project. SOO Green states that, however, in the event that an affiliate participates in the open solicitation process, the facts and circumstances surrounding any allocation of transmission capacity rights to any affiliate will be documented and explained in the filing that SOO Green and the independent evaluator will make to the Commission.⁵⁶

34. SOO Green states that it intends to turn over operational control of the Project to either MISO or PJM. SOO Green asserts that, accordingly, one of the two RTOs' tariffs

⁵⁴ 2013 Policy Statement, 142 FERC ¶ 61,038 at P 34.

⁵⁵ SOO Green Filing at 3.

⁵⁶ *Id.* at 24.

will govern any transmission service utilizing the Project.⁵⁷ SOO Green states that both affiliates and non-affiliates will conduct such transactions according to the applicable rate schedule under an RTO's OATT.⁵⁸ SOO Green also contends that it will file electric quarterly reports with the Commission of its transactions, will comply with any applicable affiliate rules, and will be subject to the Commission's Standards of Conduct,⁵⁹ to the extent any affiliate takes transmission service on the Project. SOO Green asserts that, therefore, its proposal to charge negotiated rates for transmission capacity rights does not raise any undue preference or affiliate concerns.⁶⁰

b. Commission Determination

35. We acknowledge SOO Green's commitment that, if any affiliate is allocated capacity on the Project through the open solicitation, SOO Green will present the facts and circumstances surrounding the allocation in the compliance filing that SOO Green will submit to the Commission after its open solicitation. Under those circumstances, we would expect SOO Green to detail the results and describe the process in sufficient detail to demonstrate that no affiliate has been given an undue preference, and likewise to show that the treatment of unaffiliated customers is just, reasonable, and not unduly preferential or discriminatory.

36. We also note SOO Green's commitment that, to the extent any of SOO Green's affiliates are allocated capacity on the Project, SOO Green will: (1) file electric quarterly reports of its transactions with the Commission; (2) comply with any applicable affiliate rules; and (3) be subject to the Commission's Standards of Conduct. These commitments help ensure that all transactions are transparent. In addition, we acknowledge SOO Green's commitment to turn over operational control of its facilities to either MISO or PJM.

37. When SOO Green submits its compliance filing after its open solicitation, we will consider whether or not the capacity allocation process was just, reasonable, and not unduly preferential or discriminatory.

⁵⁷ *Id.*

⁵⁸ *Id.* (citing *Chinook*, 126 FERC ¶ 61,134 at P 58).

⁵⁹ SOO Green Filing at 24-25 & n.44 (citing *Standards of Conduct for Transmission Providers*, 129 FERC ¶ 61,043 (2009)).

⁶⁰ *Id.* at 24-25.

4. **Factor Four: Regional Reliability and Operational Efficiency**

38. To ensure regional reliability and operational efficiency, the Commission requires that any merchant transmission developer whose project is connected to an RTO or an 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.⁶¹ 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. **SOO Green's Proposal**

39. SOO Green explains that the Project will be connected to the MISO and PJM systems, and that SOO Green intends to turn over operational control of the Project to either MISO or PJM before commercial operation of the Project. Furthermore, SOO Green commits to comply with all applicable reliability requirements, including the requirements of NERC and the applicable regional reliability council. Additionally, SOO Green states that the Project will be reviewed, vetted, and approved through the MISO and PJM interconnection processes, and this will ensure resolution of any potential system reliability issues.⁶² Finally, SOO Green commits not only to provide MISO and PJM with all required information necessary to inform and conduct regional transmission planning processes, consistent with the requirements of Order No. 1000, but also to comply with regional planning processes.⁶³

b. **Commission Determination**

40. We acknowledge SOO Green's commitment to turn over operational control of the Project to an RTO, comply with all applicable reliability requirements, and provide MISO and PJM with all required information necessary for their regional transmission planning processes pursuant to Order No. 1000, as well as to comply with those processes. Accordingly, we find that SOO Green's proposal meets regional reliability

⁶¹ 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).

⁶² SOO Green Filing at 25.

⁶³ *Id.* at 26 (citing *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011) (subsequent history omitted)).

and operational efficiency requirements, subject to SOO Green's continuing participation in the necessary regional transmission planning processes.⁶⁴

B. Request for Waivers

1. SOO Green's Proposal

41. SOO Green requests a waiver of certain regulatory requirements applicable to public utilities that the Commission routinely waives for entities selling transmission rights at negotiated rates.⁶⁵ SOO Green states that, upon completion of the Project, SOO Green will own facilities used for the transmission of electricity in interstate commerce and, therefore, will be a public utility. SOO Green notes, however, that the Commission has explained that public utility status attaches at the earlier of the date when a project "commences interstate sales or transmission, or when the Commission accepts a voluntary rate filing."⁶⁶ SOO Green states that, because SOO Green is not submitting, as part of this application, a proposed tariff or rate schedule and cannot yet provide transmission service, Commission action on this application cannot, by itself, render SOO Green a public utility. However, SOO Green requests that the Commission grant at this time the waivers discussed below, which will become effective when SOO Green becomes a public utility.⁶⁷

42. SOO Green requests waiver of: (1) the full reporting requirements of Subparts B and C of Part 35 of the Commission's regulations (except for the requirements of Sections 35.12(a), 35.13(b), 35.15, and 35.16);⁶⁸ and (2) Part 141 relating to forms and reports, except Sections 141.14 and 141.15,⁶⁹ including the Form No. 1, Annual Report

⁶⁴ Order No. 1000 requires merchant transmission developers to provide "adequate information and data to allow public utility transmission providers in the transmission planning region to assess the potential reliability and operational impacts of the merchant transmission developer's proposed transmission facilities on other systems in the region." Order No. 1000, 136 FERC ¶ 61,051 at P 164; *see also ISO New England Inc.*, 143 FERC ¶ 61,150, at P 70 (2013).

⁶⁵ SOO Green Filing at 27 (*citing Me. Power Express*, 156 FERC ¶ 61,002, at PP 32-33 (2016) (*Me. Power Express*)).

⁶⁶ *Id.* (*citing Multitrade Ltd. P'ship*, 63 FERC ¶ 61,252, at 62,692 (1993)).

⁶⁷ *Id.* at 27-28.

⁶⁸ *Id.* at 28 (*citing* 18 C.F.R. §§ 35.12(a), 35.13(b), 35.15, & 35.16 (2019)).

⁶⁹ *Id.* (*citing* 18 C.F.R. §§ 141.14 and 141.15).

of Major Electric Utilities, Licensees and Others, filing requirement. SOO Green notes that the Commission has granted similar waiver requests to other merchant transmission owners seeking negotiated rate authority.⁷⁰ Additionally, SOO Green requests waiver of any other part of the Commission's regulations necessary to grant the authorizations requested herein.⁷¹

2. Commission Determination

43. Consistent with our findings for other merchant transmission proposals, we grant waiver of the full reporting requirements of Subparts B and C of Part 35 of the Commission's regulations, except for the requirements of sections 35.12(a), 35.13(b), 35.15, and 35.16, as requested by SOO Green.⁷²

44. We also grant SOO Green's request for waiver of Part 141, including the FERC Form No. 1 reporting requirement. The Commission has previously granted waiver of these requirements to other merchant transmission developers.⁷³

The Commission orders:

(A) SOO Green is hereby granted authority to sell transmission rights on its proposed Project at negotiated rates, subject to its submission of a compliance filing after its open solicitation, as discussed in the body of this order.

(B) SOO Green is hereby directed to file the compliance filing with the Commission within 30 days after the close of its open solicitation process, as discussed in the body of this order.

⁷⁰ *Id.* (citing *Me. Power Express*, 156 FERC ¶ 61,002 at P 32; *Chinook*, 126 FERC ¶ 61,134 at PP 68-69).

⁷¹ *Id.*

⁷² *See, e.g., Tres Amigas*, 153 FERC ¶ 61,287 at P 48 (2015); *Lucky Corridor, LLC*, 151 FERC ¶ 61,072, at P 47 (2015).

⁷³ *See, e.g., Plains and Eastern Clean Line LLC*, 148 FERC ¶ 61,122, at P 35 (2014); *Lake Erie*, 144 FERC ¶ 61,203 at P 31.

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(C) SOO Green is hereby granted 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, and of Part 141 of the Commission's regulations, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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