

UNITED STATES OF AMERICA 96 FERC ¶ 61,147  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;  
William L. Massey, Linda Breathitt,  
Pat Wood, III and Nora Mead Brownell.

Neptune Regional Transmission System, LLC Docket No. ER01-2099-000

ORDER APPROVING PROPOSAL SUBJECT TO CONDITIONS

(Issued July 27, 2001)

Neptune Regional Transmission System, LLC (Neptune) proposes to construct a merchant transmission facility in four stages. The Neptune Project will consist of several thousand miles of undersea high-voltage direct current transmission systems which will connect capacity-rich regions in Maine, New Brunswick and Nova Scotia with capacity-constrained markets in Boston, New York City, Long Island and Connecticut. Neptune requests approval of its proposed tariff, which provides for the transmission of electricity at rates established through negotiations and open seasons. In this order, the Commission grants Neptune's request, subject to conditions.

I. Proposal

A. Overview. The Neptune Project will run from four interconnections, each of which will have a capacity of 1,200 MW, in New Brunswick, Maine and New Jersey to interconnections in downtown Boston, downtown New York City, Long Island and Connecticut. The Neptune Project will allow the transmission of 3,600 MW of power from Maine and Canada to the Northeast. In addition, the Neptune Project will permit transfers of 1,200 MW of power from PJM to NEPOOL and the New York Power Pool.

The first phase of the project will consist of a relatively short leg running from New Jersey to New York City and Long Island and is scheduled to be in service by the summer of 2003. Specifically, one 600 MW system will connect a PSE&G substation near Linden, New Jersey to a ConEd substation at Farragut in Brooklyn; another 600 MW system, through two 300 MW cables, will connect a GPU substation at Red Bank, New Jersey to LIPA substations at Valley Stream and Bridge Road in Long Island. The subsequent stages of the Neptune Project will be constructed to the extent they are supported by market demand. As currently planned, the second phase will connect New Brunswick to New York City no later than the summer of 2004. In Phase 3, scheduled for 2005, Nova Scotia and Boston are added as interconnection points. Maine and Connecticut are added as interconnections in Phase 4 in 2006.

B. Ownership and Affiliation. Neptune is a Delaware limited liability corporation whose sole member is Atlantic Energy Partners, LLC, a Maine limited liability corporation. Equity interests in Neptune will be sold to third-party investors in the future as part of the process of obtaining financing for the project. Neptune states that neither it nor Atlantic Energy Partners, LLC, are

affiliated with electric utilities under the Federal Power Act, or any market participants as defined under Section 35.34(b)(2) of the Commission's Regulations.

C. Neptune's Proposed Tariff.

1. Relationship with Pro-Forma Tariff. Neptune proposes to provide transmission service under the tariff it includes with its filing. Neptune states that it has, to the extent possible, used in its proposed tariff the definitions and terms and conditions contained in the Order No. 888 pro forma tariff. It notes, however, that many of the Order No. 888 provisions are simply not applicable to a merchant transmission proposal. For example, current ISO tariffs include rates and capacity allocation procedures that are significantly different from Neptune's proposal. Neptune notes that since its project constitutes an alternative to service under existing ISO or RTO tariffs, potential customers will always have the ability to take service under the ISO or RTO tariffs. Customers are therefore protected from the exercise of undue market power as a consequence of any term in its tariff. Furthermore, Neptune notes that it is offering open-access transmission service, albeit on somewhat different terms and conditions contemplated by Order No. 888. Accordingly, Neptune requests a waiver of the requirement that it provide service under the Order No. 888 tariff.

2. Coordination with RTO. Neptune proposes to transfer operational control over the Neptune Project to an RTO, provided that the essential elements of its proposal dealing with the open-season process are preserved. Neptune states that it will negotiate with Northeastern ISOs to transfer operational control as part of the RTO proposal. Further, Neptune notes that although its proposed tariff does not provide for any ancillary services, the tariff of the RTO will likely impose scheduling and imbalance charges.

D. Transmission Scheduling Rights (TSRs). The right to use the Neptune Project will be sold as TSRs. TSRs will entitle their holders to schedule transactions between a specified point of receipt and a specified point of delivery. TSRs allow the transmission of power in a single direction. Counterflows will allow TSRs to be sold separately in each direction on particular paths, up to the rated capacity of the path.

E. Allocation of Capacity. Neptune proposes to allocate at least 80 percent of its capacity on a long-term basis, *i.e.*, pursuant to TSRs with a duration of one year or longer. Long-term capacity will be allocated in three stages. Short-term capacity will be made available through open seasons. TSRs may also be purchased and sold in the secondary market.

1. Stage 1: Negotiated Transactions. In its initial allocation stage, Neptune may negotiate individually with unaffiliated entities for the sale of long-term TSRs for up to 30 percent of the capacity of the Neptune system. For these negotiated transactions, Neptune will post on its web site the name of the customer, the number and expiration date of the TSRs sold, and a contact person for purposes of facilitating secondary market transactions. Neptune states that negotiating such deals early in the development process will give Neptune assurances that there is adequate interest in the project to go forward. Neptune further states that the negotiated transactions will give the project legitimacy and momentum that will make it more likely that other potential customers will be interested in participating.

2. Stage 2: Initial Open Season. Neptune proposes to conduct an initial open season for long-term TSRs on September 10, 2001. This open season will apply to at least the remainder of the 80 percent of total capacity earmarked for long-term TSRs not subject to negotiated transactions. The rules for the open season are set forth in Section 12 of Neptune's tariff. Neptune will post notice of the open season on its website. To qualify for participation in the open season, entities must meet credit-worthiness standards. All entities that meet the minimum standards will be treated equally in the evaluation process. Bids will be evaluated and TSRs awarded so as to result in the greatest total net present value to Neptune. Because long-term TSRs are crucial to the financing of the project, the tariff allows Neptune to specify a minimum term for bids. In addition, the tariff allows Neptune to reject, on a non-discriminatory basis, any bid to purchase TSRs for a shorter period of them than the minimum term. After evaluating bids, Neptune will post the results of its open seasons on its website. Specifically, Neptune will post the names of the winners, the number of TSRs they were allocated, the expiration date of their TSRs, and the name of a contact person. However, Neptune will not post the price of the winning bids, but rather, it will retain information regarding prices and make it available to the Northeastern market monitors under the same terms, including confidentiality, that other market information is made available to market monitors.

3. Stage 3: Subsequent Open-Seasons. In the third stage, the RTO that operates the Neptune Project will conduct open seasons at least annually to the extent (1) long-term TSRs are still available after the initial open season, (2) the terms of the original long-term purchases expired, or (3) Neptune decides to offer a larger percentage of TSRs on a long-term basis. Alternatively, Neptune may decide to offer capacity initially offered on a long-term basis to be sold by the RTO on a short-term basis. However, capacity sold on a long-term basis must always be sold on a long-term basis, if there are bids for that capacity that support the debt requirement of the project. The Stage 3 open seasons will be conducted under the same rules applicable to the initial open season, with at least 60 days notice posted on the OASIS of the RTO operating the project.

4. Short-Term Open Seasons. Neptune is reserving at least 80 percent of its capacity for long-term service. Neptune will make all of the remaining capacity available on a short-term basis for sale in the open seasons administered by the RTO. Neptune notes that the use of short-term open seasons serves as a check on potential market power exercised by holders of long-term TSRs because the short-term open-season prices will act to limit the price at which long-term TSRs can be resold in the secondary market. Further, Neptune notes that short-term open seasons ensure that a certain amount of generation will be able to use the Neptune system in competition with the holders of long-term TSRs.

Neptune states that it does not know whether there will be a demand for monthly, weekly, daily, or hourly TSRs. Therefore, Neptune proposes to retain the flexibility to offer to sell some or all of the TSRs not sold in the long-term open seasons on a monthly, weekly or daily basis. Neptune will provide on OASIS seven-day advance notice for monthly auctions, two-day notice for weekly auctions and one-day notice for daily auctions. In addition, the tariff requires the RTO to conduct day-ahead open seasons every day as well as hourly open seasons every hour. Neptune states that the sole criterion upon which short-term TSRs will be evaluated is the price per TSR. Short-term TSRs will be awarded to all bidders up to the total amount of TSRs made available for the open season,

regardless of the price bid. No bid will be rejected because the price is too low. The results of the open seasons will be posted on Neptune's website.

To prevent customers from withholding capacity, Neptune proposes a use-it-or-lose it provision. Under this provision, TSRs not scheduled for use before the hourly open season are lost for those hours in which the TSRs are not scheduled. These "lost" TSRs are then available for the hourly open season. Since Neptune, not the TSR holder, will receive the revenue from the sale of these lost TSRs, TSR holders have an incentive to participate in the secondary market, so that they may retain the revenues from the sale of their TSR.

5. Secondary Market. TSRs are fully tradable and may be broken down into increments as small as 1 MW and or time periods as short as one hour. To facilitate the secondary market, Neptune has provided for an electronic bulletin board system (to be operated by the RTO). Neptune will require that all trades in the secondary market be reported on the bulletin board. Neptune will also provide parties the option of using the bulletin board to post offers to buy and sell TSRs.

F. Pricing for Transmission Services. Neptune's proposed tariff establishes rates for services over its undersea, high-voltage, direct current transmission facilities through negotiations and open seasons. As a practical matter, Neptune notes that bids will be capped by the opportunity costs of generating power at the delivery point or transmitting power to that location through alternative means; opportunity costs will be capped at the cost of constructing new generation or transmission in competition with the Neptune Project. Neptune states that the market forces that act to impose these caps apply whether the rate results from private negotiations or transparent open seasons. In either case, the purchaser of TSRs will not pay more than its opportunity costs for TSRs.<sup>1</sup> Neptune notes that its proposal should allow power to be delivered into a region at a total cost that is lower than the prevailing price in that region, thus lowering power prices in the region. Finally, Neptune notes that its pricing approach is consistent with that approved by the Commission in TransEnergie U.S., Ltd. 91 FERC ¶ 61,230 (2000).

G. Risk. Neptune states that it will assume the entire risk for the Neptune Project. Neptune notes that it has no existing customers, captive or otherwise, that will be asked to assume any risks. Neptune further states that it will not sell transmission capacity to its affiliates. Neptune explains that the success of the project is dependent upon its ability to sell transmission capacity to unaffiliated third parties at rates that will allow the project to be operated at a profit.

H. Payment for System Benefits. Neptune notes that its proposed system will confer valuable system benefits on the existing transmission grid including:

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<sup>1</sup> Neptune also performed a market power study which it states demonstrates that no market power concerns are raised by its proposal.

- Increasing the transfer capability of existing transmission facilities, thus relieving several constrained interfaces,
- Enhancing voltage support,
- Increasing overall system controllability, thus augmenting regional emergency response capability,
- Increasing overall system reliability,
- Improving transient response, thus enhancing system stability, and
- Reducing local and regional reserve requirements.

Neptune believes that it should be compensated for providing these significant benefits. It notes that payment for these benefits are very important to the viability of the merchant transmission project. Neptune plans to commission studies to determine and document the extent and value of these benefits, and then submit the studies for review by the relevant reliability councils. Neptune will then begin formal negotiations with grid operators regarding appropriate payment levels for the benefits that the Neptune Project will confer on their grids. Neptune states that it will attempt to resolve any differences over system benefit payments to be paid by grid operators through negotiations. Neptune requests that the Commission approve the concept that Neptune can recover charges for providing system benefits, with the understanding that if the parties are unable to agree on the reasonableness of the charges, Neptune may make an appropriate filing with the Commission.

#### I. Requests for Waivers.

Neptune requests waiver of the following Commission Regulations: Part 41, regarding accounts, records, and memoranda; Part 101, regarding the uniform system of accounts; and Part 141, regarding statements and reports (with the exception of 18 C.F.R. 141.14, 15 (1999)). Neptune cites Commission precedent which grants waiver from its regulations to entities not affiliated with traditional electric utilities that are granted market-based rates for the sale of power.

Neptune also seeks blanket authorization under Section 204 of the Federal Power Act to issue securities and assume obligations or liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person. Neptune states that it is willing to accept the requirement imposed by the Commission on such blanket authorization that such issue or assumption is for some lawful object within the corporate purposes of Neptune compatible with the public interest, and reasonably necessary or appropriate for such purposes.

Finally, Neptune requests waiver of the full requirements of Part 45 of the Commission's Regulations, with respect to any person now holding or who may hold an otherwise proscribed interlocking directorate involving Neptune. Any such person instead will file a sworn application providing the following information: (1) full name and business address, and (2) all jurisdictional interlocks, identifying the affected companies and the positions held by that person.

## II. Procedural Matters

Notice of Neptune's filing was published in the Federal Register, 66 Fed. Reg. 30,180 (2001), with comments, protests, and interventions due on or before June 13, 2001. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. 18 C.F.R. § 385.214 (2000). Granting later intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

On June 28, 2001, Neptune filed a response to the comments and protests. An answer to protests is not permitted under 18 C.F.R. § 385.213(a)(2) of the Commission's regulations. Accordingly, Neptune's answer is rejected.

GPU Energy and PECO Energy Company filed a joint motion to intervene and protest. They contend that the filing raises issues of material fact and therefore request that the filing be set for hearing or other procedures. The PSE&G Companies, PJM Transmission Owners, and PJM Interconnection, L.L.C. filed comments on Neptune's proposal raising issues which need to be addressed.

## III. Discussion

Neptune is proposing a project which will link capacity-rich regions in Maine and eastern Canada with capacity-deficient regions in the Northeastern United States. As a merchant transmission facility, it is proposing to assume all of the risk of the project. Further, it is proposing to establish rates which will effectively be capped by market forces. Like the TransEnergie Project, the Commission believes that the Neptune Project can play a useful role in expanding competitive generation alternatives for customers.<sup>2</sup>

In TransEnergie, we applied certain criteria proposed by TransEnergie in the evaluation of the project. Although we applied these criteria to the narrow circumstances of the TransEnergie Project, they are equally applicable in this proceeding, since the Neptune Project was modeled after the TransEnergie Project. These criteria are: that the merchant transmission facility should assume full market risk; that the merchant transmission facility should create tradable transmission rights, that an open-season process should be employed to initially allocate transmission rights; that the merchant transmission facility should not preclude access to essential facilities by competitors; that the merchant transmission facilities should be subject to market monitoring for market power abuse; that physical energy flows on merchant transmission facilities should be coordinated with, and subject to, reliability requirements of the relevant ISO or RTOs; and that merchant transmission facilities should not impair pre-existing property rights to use the transmission grids or inter-connected RTOS or utilities. Except as discussed below, the Neptune Project satisfies these criteria.

Neptune requests approval of its proposed tariff and requests waiver of the requirement to provide service under the Order No. 888 pro-forma tariff. Neptune contends that current ISO tariffs

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<sup>2</sup>91 FERC at 61,838.

include rates and capacity allocation procedures that are significantly different from those included in Neptune's proposal.<sup>3</sup> It also contends that it needs to ensure that the initial long-terms bids are structured and evaluated correctly so that it can secure financing for the project. Accordingly, Neptune proposes to retain the authority to amend its proposed stand-alone tariff. Nevertheless, Neptune is willing for transmission service to be provided under an RTO tariff, provided that the essential elements of its proposal are preserved regarding the long-term and short-term open seasons and payment to Neptune of the open-season proceeds.

Consistent with our ruling in TransEnergie, we will condition approval of Neptune's proposal on Neptune joining an RTO adjacent to, or containing, the geographic area of its proposed facilities and placing operational control of its facilities under the RTO. 91 FERC at 61,840. We direct Neptune to work with the Northeastern RTO to ensure that the RTO's tariff is designed in a manner that accommodates Neptune's financing needs. Since the first phase of Neptune is scheduled for operation by the summer of 2003, service should be provided under the terms and conditions of the RTO which will operate Neptune. For purposes of assisting Neptune in securing financing, the Commission specifically approves the concepts underlying Neptune's proposed tariff dealing with the open seasons. The Commission, however, is not approving the proposed stand-alone tariff and is denying Neptune's request for waiver of the requirement to provide service under the Order No. 888 pro-forma tariff.

The facilities constructed under Phase 1 of the Neptune Project will connect PJM facilities in New Jersey with New York utilities. Several parties noted that Neptune did not address how it intends to conform to the requirements established by the ISOs/RTOs to which it will connect. They specifically noted that Neptune did not address how it will conform to PJM's protocols for system expansions, reliability, interconnections or upgrade costs. Neptune is hereby advised that any of its proposed facilities that connect with existing transmission grids must conform to the protocols approved by this Commission for that system.

There are several features of Neptune's proposal that differ from the proposal we approved in TransEnergie. For example, Neptune proposes to negotiate bilateral transactions with large customers prior to conducting the open season for up to 30 percent of the capacity of the system. Neptune states that negotiating such transactions prior to the open season will provide it with assurances that there is adequate interest in the project, thus providing legitimacy and momentum. Neptune contends that as a practical matter, the rates negotiated through bilateral transactions will be capped by the same market forces that will cap rates during the open season.

The Commission believes that the open season process that Neptune has proposed will provide it with the assurances it needs to go forward and will not approve the bilateral negotiations. If the proposed project is economically viable, Neptune should be able to get binding financial commitments through contracts executed under the September 10, 2001 open season without a "jump start" of several weeks. Since prices will effectively be capped at the same rates prior to and during the open season, there is no financial benefit to Neptune by negotiating for 30 percent of its capacity prior to the open season. As a matter of policy, the Commission believes that all capacity for

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<sup>3</sup> Application, p. 10.

merchant transmission projects should be made available solely through the open season process. This will help ensure the Commission and all parties that the allocation of capacity is transparent, non-discriminatory and fair.<sup>4</sup>

Another aspect of Neptune's proposal that differs from TransEnergie deals with risk. Neptune states that it is assuming the entire risk of the project. However, several parties dispute this statement. They contend that Neptune is seeking to transfer a substantial part of the financial risk of the project onto existing stakeholders in the Northeast region through the assessment of charges for system benefits. Also, in TransEnergie, the Commission emphasized that there would be no increase in existing grid charges. 91 FERC at 61,837. Neptune's proposal to receive compensation for providing system benefits could result in increases in existing charges, as the proposed charges for system benefits would be passed on to consumers.

Parties strongly object to Neptune's request for the Commission to approve the concept that Neptune can recover charges for providing system benefits charges. For example, GPU/PECO contend that Neptune's request is premature. They note that Neptune's filing is completely devoid of analysis, support or explanation of the implications associated with the addition of the major interconnection to the PJM system proposed in Phase 1. They contend that if Neptune wishes to recover system benefits, it must make the appropriate filing under Section 205 of the FPA. Similarly, PJM requests that the Commission dismiss, without prejudice, Neptune's proposed system benefits payments.

GPU/PECO contend that Neptune should not receive approval to operate as a merchant transmission system, essentially charging negotiated, market-based rates, and receive a charge for system benefits.

As a merchant project with the authority to determine the project's size and to negotiate rates, Neptune must be prepared to bear 100 percent of the risks of constructing the project. If Neptune believes that its project provides measurable benefits on the systems to which it connects, Neptune is free to negotiate with the various grid operators to obtain financial support for the project. However, if those negotiations are unsuccessful, Neptune may not rely on this Commission to compel payment for any claimed benefits. Neptune's decision to proceed with its plans should be based solely on the value of its private market negotiations. In sum, we will not guarantee compensation for a merchant transmission project while allowing that project to retain both its at-risk status and the authority to determine project size and to negotiate rates.

As noted above, we are conditioning approval of Neptune's proposal on Neptune joining the Northeastern RTO. Currently, in the Northeastern ISOs, if a member pays to expand capacity, that member receives the financial rights to that capacity. The same should occur for a merchant transmission line, such as Neptune, that joins the RTO.

To alleviate concerns about affiliate abuse, Neptune proposes to exclude affiliates from acquiring transmission rights in the open seasons. However, Neptune does not propose to bar its

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<sup>4</sup>TransEnergie. 91 FERC at 61,839.

affiliates from participation in the secondary market. The Commission finds that Neptune's proposal for limiting the potential for affiliate abuse, which is consistent with TransEnergie, is reasonable.

Neptune states that it will provide nonpublic information about the provision of service to the market monitors of ISO New England, the New York ISO and PJM under the terms applicable to the provisions of other market information to those market monitors.<sup>5</sup> Further, all information regarding transmission service and TSRs will be posted on the OASIS operated by the RTO.<sup>6</sup> Consistent with our ruling in TransEnergie, we will require Neptune to comply with all data requests it receives from any market monitoring entity we have authorized. Furthermore, we will require Neptune to comply with Part 37 of the Commission's regulations, including standards of conduct. In addition, we will require Neptune to file the same type of quarterly reports of its transactions as required by power marketers. Further, Neptune is directed to inform the Commission of any changes that would reflect a departure from the characteristics that the Commission has relied upon in approving the Neptune Proposal. Finally, we will require the RTO that operates Neptune to post on its OASIS all information regarding open seasons, TSRs, and transmission services, as provided in Neptune's filing.

The Commission orders:

(A) The Commission accepts Neptune's proposal for a merchant transmission project, subject to the conditions set out in this order.

(B) Neptune's request for waiver of the requirement to provide service under the Order No. 888 pro-forma tariff and its request for a stand-alone tariff are denied.

(C) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Neptune should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission Rules of Practice and Procedure, 18 C.F.R. 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, Neptune is hereby authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Neptune, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(E) The Commission reserves the right to modify this order to require a further showing that neither the public nor private interests will be adversely affected by continued Commission approval of Neptune's issuances of securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

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<sup>5</sup> Application, pp. 22, 35.

<sup>6</sup> Proposed Tariff, Original Sheet No. 7.

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(F) Neptune's Answer is rejected.

(G) Neptune's requests for waivers are denied unless specifically granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Linwood A. Watson, Jr.,  
Acting Secretary.