

STEPTOE & JOHNSON^{LLP}

ATTORNEYS AT LAW

David B. Raskin
202.429.6254
draskin@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
Tel 202.429.3000
Fax 202.429.3902
steptoe.com

December 8, 2009

Via Electronic Filing

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: *Tres Amigas LLC*
Docket No. ER10- -000

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act and Part 35 of the rules and regulations of the Federal Energy Regulatory Commission, Tres Amigas LLC submits its Application for Authorization to Sell Transmission Rights at Negotiated Rates and for Related Relief.

Please do not hesitate to contact the undersigned if you have any questions in this matter.

Respectfully submitted,

/s/ David B. Raskin

David B. Raskin
Attorney for Tres Amigas LLC

Attachments

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Tres Amigas LLC

Docket No. ER10-_____

**APPLICATION FOR AUTHORIZATION TO SELL
TRANSMISSION SERVICES AT NEGOTIATED
RATES AND FOR RELATED RELIEF**

Pursuant to Section 205 of the Federal Power Act (“FPA”), 16 U.S.C. § 824d (2006), and Part 35 of the rules and regulations of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. Part 35 (2009), Tres Amigas LLC (“Applicant”) hereby files for authorization to sell transmission services at negotiated rates. In this filing, the Applicant will demonstrate that it satisfies the standards established by the Commission in *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134 (2008) (hereinafter “*Chinook Order*”) for obtaining negotiated pricing for transmission services over its merchant facility and that granting negotiated pricing will be in the public interest. In addition, the Applicant requests a waiver of certain Commission filing requirements, consistent with the *Chinook Order*.

The Applicant requests an effective date for this filing of February 6, 2010, which is sixty days from the date of this filing. Approval of this filing will allow the Applicant to move forward with the development of Tres Amigas, including making significant additional investments in design, engineering, and equipment procurement.

As shown below, moving forward with this important project is demonstrably in the public interest.

I. REASON FOR THE INSTANT FILING

Although this filing is styled as a request for negotiated rates, it is in reality a request for authorization to proceed with the Tres Amigas Superstation (“Tres Amigas”). The Applicant cannot realistically use traditional, cost-based transmission service pricing. Cost-based pricing normally applies to transmission providers that have captive customers who bear responsibility for the cost of transmission under an individual or regional open access transmission tariff (“OATT”) or other transmission arrangement. The Applicant has no captive customers and there is no regional transmission organization (“RTO”) OATT under which the costs of Tres Amigas can be recovered. The beneficiaries of the Tres Amigas project will be in all three interconnections and therefore will be spread over a geographical area that far exceeds the scope of any existing or proposed OATT with cost-based rates. The very purpose of Tres Amigas is to eliminate the barrier created by the current separation of the U.S. transmission system into three asynchronous grids, providing new transaction opportunities across much of the United States.

The risks associated with Tres Amigas also exceed those associated with a typical cost-based transmission project. As discussed in Section VI.A below, the Applicant is taking on the full market risk associated with this project. This risk is unique in that no one has constructed a facility like Tres Amigas before. The economic success of this project will depend on the market’s response to the availability of service

through this facility and on the willingness and ability of third parties to construct transmission lines to Tres Amigas, factors over which the Applicant will have virtually no control.

The Applicant has invested two years of effort and considerable expense to develop an engineering solution to a long-recognized transmission system need. Thus far, Tres Amigas has received a positive response from throughout the industry and from public officials. However, if this application is not approved, the Applicant will have no means to recover the \$1 billion or more projected initial investment required to design and build Tres Amigas, and the project cannot proceed.

II. IDENTITY OF THE APPLICANT

The Applicant is a start-up, limited liability company that will be devoted exclusively to developing, owning and operating Tres Amigas. The owners of the Applicant are Phillip Harris, the former CEO of PJM; Ziad Alaywan, former head of market and grid operations at the California ISO (“CAISO”) and current CEO of Z-Global, an engineering and consulting firm; Alt Energy, LLC, a private equity fund focused on alternative energy projects; and American Superconductor Corporation, a NASDAQ traded company with a market capitalization of over \$1.5 billion that is the developer of the superconducting DC transmission cable technology that will be used at Tres Amigas.¹

¹ Mr. Harris’s and Mr. Alaywan’s interests in Tres Amigas are owned by closely held companies that they control.

Neither the Applicant nor any of its owners have any captive customers.²

Tres Amigas and its owners do not own or control any other generation or transmission assets that could be used to exercise market power or limit entry by others.³ Other than the land on which the Applicant has acquired a lease option from the State of New Mexico in order to build Tres Amigas, the Applicant and its owners do not own or control any land or other property within at least several hundred miles around Tres Amigas that could be used to build bulk power facilities.

III. DESCRIPTION OF TRES AMIGAS SUPERSTATION

The Applicant proposes to build a unique, three-way AC/DC transmission superstation in eastern New Mexico that will be designed to eliminate the market separation between the three asynchronous interconnections in the continental United States.⁴ Tres Amigas will help resolve a problem that has confounded the electric

² In this filing, when the Applicant refers to itself and its owners, this reference includes all of the shareholders of the Applicant, any affiliates of the Applicant, and any affiliates of the Applicant's owners.

³ Some of the owners of Tres Amigas have an interest in a proposed 70 mile AC transmission line project under development in California, called the Green Energy Express. If and when this proposed project is completed, operating control will be transferred to the California ISO. Transmission service over this line will be at cost-based rates and recovered through the California ISO OATT. Alt Energy has a non-controlling interest in a wind development company that owns property in the State of Iowa. With these exceptions, the owners of Tres Amigas do not have an equity interest in any other generation or transmission facilities in the relevant three electricity grids (*infra*, n.3). Tres Amigas part owner, American Superconductor, is offering its technology to utilities throughout the United States and the rest of the world, and has several projects in place or under consideration in which it is a vendor of its technology. It has not acquired and does not presently intend to acquire corporate control over the use of the facilities constructed with its technology.

⁴ These three asynchronous grids are the Western Electric Coordinating Council ("WECC"), the Electric Reliability Council of Texas ("ERCOT"), and the Eastern Interconnection. In the absence of a conversion of electricity to direct current ("DC") and back to synchronized,

(Continued ...)

industry for many years and that has stifled the efficient development of the electric system in the Southwest and neighboring areas. It will employ cutting edge technologies, such as voltage source converters and underground superconducting DC transmission cable, in a unique and creative engineering configuration in order to remove barriers to the movement of power across the electric system.

The Applicant has acquired an option to lease property for Tres Amigas near Clovis, New Mexico, one mile from the Texas border, at a strategic location that is accessible to the transmission systems in each of the three interconnections and adjacent to geographic areas that have among the highest potential in the nation for the development of renewable generation. Tres Amigas will be designed with a potential total transfer capability that far exceeds the sum of all the existing AC/DC interconnections between ERCOT, WECC and the Eastern Interconnection. The project is deliberately being engineered to allow for substantial growth on a component basis so that it can contribute to the expansion of renewable generation in the region. However, this design parameter will significantly increase its initial cost and thus the financial risk associated with the project.

Tres Amigas will operate as an approved Balancing Authority Area within the WECC. Tres Amigas will permit power sellers in ERCOT to schedule power to either the Eastern Interconnection or the WECC; power sellers in the Eastern Interconnection to schedule power to either ERCOT or the WECC; and power sellers in

alternating current (AC), electricity cannot be transferred from one of the asynchronized grids to another without causing substantial damage to facilities and equipment.

WECC to schedule power to either ERCOT or the Eastern Interconnection. Tres Amigas will establish and post the transfer capabilities (*i.e.*, ATCs) at each of the six scheduling pairs described above in accordance with the reliability standards of the affected NERC subregions.

The basic design of Tres Amigas is shown in Attachment A to this filing. The design will permit multiple, high capacity AC/DC voltage source converters to be constructed at the interconnection points (or terminals) with each of the Eastern Interconnection, WECC and ERCOT. Voltage source converters, in contrast with the technology used at most of the existing AC/DC ties in the United States, will allow Tres Amigas to independently control the direction of real and reactive power flows at each terminal, permitting Tres Amigas to move scheduled power in different directions on short notice and also to supply reactive power to the electric system as necessary, acting much like a large generator stabilizing the electric system surrounding Tres Amigas, but with the added capability to supply different amounts of reactive power to each of the three asynchronous interconnections depending on system needs.

The use of voltage source converters at Tres Amigas will permit others to construct AC lines to Tres Amigas without having to invest in series compensation or other costly mechanisms to provide voltage support to the AC system in a remote area. It will also enhance the capability of the system surrounding Tres Amigas to reliably support large quantities of intermittent wind and solar generation, which do not provide reactive power to the system. The technology employed at Tres Amigas should also reduce losses on the interconnecting AC lines, lowering the cost of delivering power.

The number and size of the AC/DC converters constructed at each terminal will depend on the demand for transmission service and the number and size of the interconnecting lines built to Tres Amigas. Based on discussions with the vendors of voltage source converter technology, it appears that the optimal design for Tres Amigas will be based on using 750 MW size converters that can be installed on a component basis to provide whatever level of AC/DC conversion is consistent with the demand for service at each terminal. This new technology is evolving, however, and the existing vendors offer different solutions with different size options.

The three interconnection points, or terminals, will be tied together with several miles of underground, superconducting DC transmission cable, which is a new technology developed by Tres Amigas participant, American Superconductor Corporation. The initial superconducting cable will be designed to handle approximately 5 Gigawatts of transfers between each of the interconnection points, and will be expandable up to 30 Gigawatts. The use of underground superconducting DC transmission cable will permit Tres Amigas to reliably move large quantities of power between the three terminals, with a manageable footprint, minimal environmental impact, and with virtually no losses or heat generation. Tres Amigas will be a showcase for this new technology that was originally developed at the Los Alamos National Laboratory.

The Tres Amigas project design includes back-up battery storage (to be powered by renewable energy). The Applicant intends to use large scale batteries at Tres Amigas to supply station power and provide ancillary services, such as balancing and

regulation services.⁵ The batteries should also provide a source for firming energy from intermittent and variable renewable resources. The Applicant also intends to install Phasor Measurement Units (“PMUs”) at each of the three terminals to enhance system operators’ ability to identify and respond to faults on the transmission system.

In short, Tres Amigas will be designed to provide substantial, reliability-related benefits to the electric grid, in addition to providing expanded opportunities to schedule power between the three asynchronous interconnections.

IV. PUBLIC INTEREST BENEFITS OF TRES AMIGAS

Tres Amigas will advance the public interest in several important ways. As a result of putting Tres Amigas into operation:

(1) A new power marketing hub will be created in proximity to large amounts of existing and potential renewable generation, providing the developers of renewable (and other) generation expanded markets in which to sell their power. The developers of this generation will therefore face more favorable economics, which will enhance the value of new generation and create additional incentives for its development. This benefit is particularly important because Tres Amigas will be located adjacent to areas of the country that have been identified as among the most promising from the standpoint of developing renewable power. Attachment B to this filing is a map prepared by the National Renewable Energy Lab showing the areas of the country with the greatest

⁵ The instant filing does not include a request for approval of rates for providing ancillary services. The Applicant will include that request in a later Section 205 filing.

economic potential for renewable power development. The map shows that Tres Amigas is well situated to assist in this development.

(2) Prices for energy in markets that are currently electrically separated will be brought closer together as the electric barrier against trading across the three interconnections is removed. Preliminary studies show that marginal energy prices vary significantly between the Eastern Interconnection, ERCOT and the WECC at this time. For example, those studies show that in 2008 energy price differences of more than \$50 per MWh occurred in over 2,000 hours between the CAISO and ERCOT, over 1,600 hours between ERCOT and the Palo Verde hub, over approximately 1,500 hours between the Southwest Power Pool (“SPP”) and the CAISO, and over approximately 800 hours between ERCOT and the SPP. Attachment C is a series of graphs showing the current price separation between the affected regions using publicly available data. By enabling these price differences to be reduced, Tres Amigas will allow energy to be supplied more efficiently, producing substantial savings for electric consumers.

(3) Opportunities will exist to “firm up” intermittent and variable renewable energy by taking advantage of geographical diversity, creating additional opportunities to create energy storage, and by using the onsite batteries at Tres Amigas. Studies have shown that the quality of intermittent and variable renewable energy can be enhanced by aggregating sources from geographic locations that may experience high winds or sunshine at different times. Tres Amigas will also expand the geographic scope of power markets generally, offering additional opportunities to undertake the development of new

storage technologies at efficient scale, as well as to take advantage of load and resource diversity across a broader region.

(4) The value of transmission investments in the affected regions will be enhanced by allowing power to move more freely between the three interconnections. Tres Amigas will permit power to move to and from different markets, expanding the potential use of the existing transmission grid and expansions thereto. Tres Amigas should provide system planners new opportunities to improve the efficiency and reliability of the electric system at a lower overall cost.

(5) Electric system reliability in the area around Tres Amigas will be improved because Tres Amigas will connect the three asynchronous grids at a robust station with back-up power and voltage source converter technology that will provide substantial, controllable reactive power to the transmission system. This is particularly important because Tres Amigas will be located in a remote area, where a strong source of reactive power will support both new transmission and new renewable generation.

Finally, Tres Amigas will operate as an open access facility, allowing the benefits to be shared across the industry. Transmission services through Tres Amigas will be offered pursuant to an OATT that will be filed with the Commission before the first open season auction of transmission rights. Tres Amigas has initiated discussions with several transmission developers who have expressed an interest in building to Tres Amigas and has made clear that it does not intend to restrict interconnection opportunities. As discussed below, the Applicant is making an expansion commitment applicable to both the AC and DC sides of Tres Amigas. To the best of the Applicant's

knowledge, no other merchant transmission developer has made a comparable commitment to expand its transmission facilities to meet market demand.

V. SUPPORT FOR TRES AMIGAS

Thus far, Tres Amigas has attracted strong interest and support in the region. Senior government officials in the State of New Mexico have indicated to the Applicant that they view Tres Amigas as an important component of their plans to attract investment in renewable power development. New Mexico has formed a Renewable Energy Transmission Authority to promote the construction of a renewable energy collector system in the State, and State officials understand the value of tying the collector system to Tres Amigas. New Mexico Governor Richardson and Senator Bingaman have both issued public statements supporting Tres Amigas.⁶

The two New Mexico investor-owned transmission service providers with transmission facilities near Tres Amigas, Public Service Company of New Mexico (“PNM”) and Southwest Public Service (“SPS”), have sent letters to Tres Amigas (Attachment D) stating their view that Tres Amigas offers significant potential benefits to New Mexico and the surrounding region, and expressing an interest in constructing a

⁶ Senator Bingaman: “The United States is embarking on an aggressive renewable energy plan, yet we lack a national transmission backbone to support our vision. By tying the nation’s three power grids together, the Tres Amigas station will catalyze the adoption of renewable power while at the same time increasing the reliability of our electricity network, which is fundamental to the expansion of the U.S. economy.”

Governor Richardson: “New Mexico leads the way in green and renewable energy development. But we need the ability to send energy produced in New Mexico to surrounding states. Tres Amigas will break that barrier, creating a larger market for our energy. New Mexico is proud to be chosen as the site for this unique renewable energy market hub.”

transmission line to the superstation, subject to obtaining required planning approvals and cost recovery. Tres Amigas has also received written expressions of support from Electric Transmission America (a joint venture between American Electric Power and MidAmerican Energy) and from ITC Grid Development (“ITC”), both of whom have stated their desire to participate in building transmission facilities to Tres Amigas if they can obtain the required regulatory support for planning and cost recovery of their investments.

Tres Amigas can also enhance the value of merchant transmission projects that are under development in the Southwest, such as the Sun Zia Project (which is currently planned to terminate near Tres Amigas and can readily be modified to interconnect with it) and the High Plains Express. The Applicant has held discussions with the developers of Sun Zia and the High Plains Express regarding potential interconnection with Tres Amigas. The Applicant believes that an opportunity also exists to build transmission from Tres Amigas to the Four Corners area in New Mexico or to the Phoenix area, which would establish a connection between Tres Amigas and the major load centers in the Southwest and California. The Applicant is interested in coordinating its efforts with transmission developers who will pursue such projects.

Tres Amigas will also be located adjacent to the transmission system of the Southwest Power Pool (“SPP”). The SPP is currently planning the construction of an “EHV Overlay” consisting of a series of 765 kV transmission lines that will be designed to integrate the thousands of MWs of wind generation that is in the SPP interconnection queue and other generation additions. As noted above, several of the companies involved

in the development of the EHV Overlay in SPP have expressed an interest in participating in the construction of transmission facilities to Tres Amigas, which could take the form of extending the EHV Overlay to Tres Amigas, making the Overlay itself, and the renewable generation connecting to it, more valuable by expanding the markets for wind energy produced in the SPP and creating opportunities to make it more reliable.

Several billion dollars of EHV transmission is also currently under development in Texas in order to integrate thousands of MWs of existing and potential renewable generation in Competitive Renewable Energy Zones (“CREZ”) identified by the Public Utility Commission of Texas. Clear opportunities exist to build transmission facilities from the CREZ transmission system to Tres Amigas. Sharyland Utilities, one of the constructors of the CREZ transmission system in the portion of Texas nearest to Tres Amigas, has sent a letter to the Applicant stating that it is interested in building a transmission line to Tres Amigas subject to obtaining necessary regulatory approvals. (Attachment E). Other ERCOT transmission developers have also contacted the Applicant expressing an interest in building to Tres Amigas. Interconnection of the CREZ transmission system with Tres Amigas will enhance the value of both the CREZ transmission system and the renewable generation connecting to the Texas grid, by creating a broader market for the export and import of renewable energy to take advantage of regional price differentials and differences in prevailing weather conditions over a broader area.

Several wind developers in eastern New Mexico and west Texas have also contacted the Applicant expressing support for Tres Amigas and offering to work with

the Applicant to get their wind farms connected to the superstation. Attachment F contains a letter of support from Sandia Wind, the developer of the 3,000 MW Mariah wind project near Tres Amigas. Tres Amigas has held numerous discussions with Sandia Wind and other wind developers in Texas and New Mexico who see the potential of the project and want to pursue opportunities to make the output of their projects deliverable to Tres Amigas.

VI. REQUEST FOR NEGOTIATED PRICING

A. The Applicant Is Assuming Substantial Market Risk

The Commission has stated that the assumption of market risk is the hallmark of a merchant transmission project.⁷ The Applicant will bear all of the market risk associated with Tres Amigas. Tres Amigas cannot foist the costs of this project onto any captive customers. No entity will be required to purchase service from the Applicant, and therefore the Applicant's ability to recover the costs of developing, constructing and operating Tres Amigas will depend entirely on the success of its transmission service sales using the negotiated rate authority granted in this case. The Applicant has already made, and will continue to make substantial investments in Tres Amigas, both in terms of dollars and time, with no guarantee of repayment. At some point, the Applicant will seek construction financing for Tres Amigas and will have to demonstrate to lenders that it represents a reasonable credit risk. It may also need to attract additional equity investment.

⁷ *Chinook Order* at P 55.

The market risk associated with this project is unique, and the negotiated rate authority the Commission grants should reflect this unique risk. First, the risk profile of this project is very different from a traditional utility transmission project. Under cost-based transmission pricing, so long as a transmission developer has obtained planning approval for its project and has acted prudently, it will normally recover its costs plus a reasonable return on investment. For significant, non-routine projects, Order No. 679⁸ also offers the protection of abandoned plant cost recovery and a return on Construction Work in Progress, reducing risk and stimulating investment in projects that offer the potential to earn no more than a regulated rate of return.

The merchant risk being assumed by the developers of Tres Amigas is much greater, and regulatory rules that are designed to constrain returns earned by merchant transmission developers to a level similar to a regulated return are neither fair nor appropriate. The Applicant's market risk is particularly high for several reasons unique to Tres Amigas. First, no one has ever built a facility like it. As described earlier in this filing, it involves the application of cutting edge technologies in a novel and creative design configuration.⁹

Second, Tres Amigas is being pursued on the assumption that if the Applicant builds this unique facility, the customers will come. But the Applicant cannot

⁸ *Promoting Transmission Investment Through Pricing Reform*, Order No. 679, 71 Fed. Reg. 43,294 (July 31, 2006), FERC Stats. & Regs. ¶ 31,222 (2006) (“Order No. 679”); *order on reh’g*, Order No. 679-A, 72 Fed. Reg. 1152 (Jan. 10, 2007), FERC Stats. & Regs. ¶ 31,236 (2006); *reh’g denied*, 119 FERC ¶ 61,062 (2007).

⁹ Of course, the use of new technologies can increase risk. *See* Order No. 679 at P 287.

rely on historical experience to measure the market here because no one has ever offered these particular services. The Applicant is relying on its vision of the future at a time of enormous change. It is proposing to invest substantial time and money on the assumption that, with the potential for large scale renewable power development in the same region, building a facility that brings the three mainland transmission interconnections together at this strategic location offers sufficient economic value that the demand for transmission service through Tres Amigas will be sufficient to justify the large initial investment.

Third, the Applicant is not *only* relying on customers to respond positively to this proposal. Tres Amigas requires that third party transmission developers perceive sufficient value in this facility that they will propose to invest in the construction of transmission lines originating in each of the three asynchronous grids to Tres Amigas, *and* that such developers will obtain the required regulatory approvals – including planning, siting and cost allocation – to build and recover the cost of their new transmission facilities. The Applicant is very encouraged by the reaction from potential transmission developers to date, but their words of support have all been caveated with the statement that their interest assumes the ability to obtain planning approvals and cost recovery for their transmission projects, and the Commission well understands that getting several major transmission lines constructed is never a simple task, even where the value of the transmission has been demonstrated.

The Applicant will also assume the risk that other projects could be proposed in the future, and/or that other new technologies may emerge that reduce the

value of Tres Amigas in the marketplace. This risk is discussed in the next section of this Application. The Applicant has no ability to impose barriers on such competitive entry.

For all these reasons, the Applicant is requesting sufficient pricing flexibility for its facility that it will be able to maximize the value of its investment and have a realistic opportunity to earn a return on its investment that is commensurate with the risks that it is assuming. The Applicant's negotiated pricing proposal is set forth in subparts D through F below.

B. The Applicant Will Not Be Able to Exercise Market Power

Unlike a public utility with captive customers, no customer will be under an obligation to purchase transmission service from Tres Amigas in order to serve its electric load. Tres Amigas will create competitive alternatives that do not exist today, but it will not limit the market alternatives of any load serving entities or other electric market participants.

Although Tres Amigas will improve system reliability, it is not a "reliability project" in the sense that it has been planned in order to allow a public utility to meet NERC reliability standards. Therefore, potential users of Tres Amigas will buy transmission service through Tres Amigas only if and because they perceive economic value in acquiring such rights after considering the options available to them today. In the *Chinook Order*, the Commission stated that a "check on the negotiated rates [for merchant transmission service] could exist where the price customers are willing to pay for transmission service is disciplined by the difference in generation prices at the ends of the line." *Chinook Order* at P 38 n.26. The prices that the Applicant will be able to

charge will be limited by the differences in energy prices between the three interconnections, because these differentials represent the maximum price that any customer should be willing to pay for the right to deliver power through Tres Amigas.¹⁰

Potential users of Tres Amigas will have multiple competitive alternatives that will discipline the prices they will be willing to pay for service from the Applicant. Generation owners and marketers making sales that are delivered through Tres Amigas will have the option of selling power in their own balancing areas and to neighboring systems in their own interconnections using the Commission's open access rules. In addition, to the extent that Tres Amigas spawns the construction of new EHV transmission, it should create other potential opportunities for the delivery of power, with or without buying service from the Applicant. To the extent that Tres Amigas spawns the development of additional renewable or other generation, it will create more power supply in the marketplace, whether or not that supply chooses to use Tres Amigas to get to the market.

Specifically, in the case of generators and marketers operating in the SPP, those entities today have the option of selling power in the SPP market, selling power from SPP directly into the MISO, or to Entergy or TVA, and selling power into ERCOT or the WECC over the existing AC/DC interconnections. They also have the option of selling power into all of the systems that are interconnected with the any of the above by paying an additional wheeling rate, which is economically equivalent to paying for

¹⁰ See also, Subpart D. below.

transmission service through Tres Amigas. The Applicant has no capability to limit any of these competitive alternatives, which appear to be massive.

For sellers or marketers in WECC, those entities will have all of the same opportunities to make sales throughout the WECC that they have today, including sales using the Western Systems Power Pool tariff. They also have opportunities to sell power into the SPP over the existing AC/DC ties with the Eastern Interconnection. The Applicant has no ability to limit any of these competitive alternatives, which appear to be substantial, as evidenced by the fact that the Commission has approved market-based rates throughout much of the WECC.

All of the same is true with respect to market activity in ERCOT, which is subject to regulation by the Public Utility Commission of Texas. Tres Amigas will not limit any of the substantial opportunities that exist for competitive trade in ERCOT, but will offer significant new opportunities for imports into and exports out of ERCOT, making the markets in ERCOT even more competitive.

What has been said above about sellers applies equally to wholesale buyers and load-serving entities. They will retain all of the options to buy power they have today from suppliers that can deliver power to their service areas under open access. Tres Amigas will provide additional options to these buyers but will not limit the options that exist today. For example, PNM and SPS, the two largest utilities in proximity to Tres Amigas with load-serving obligations, will not lose any of their existing power supply options. However, PNM will have new opportunities to buy power from the Eastern Interconnection or ERCOT when this can lower its cost, and it will have additional

opportunities to sell surplus power in order to reduce the cost of supplying its native load customers when prices are higher in these other interconnections. It will also have more options for acquiring renewable power to meet renewable portfolio requirements. Similarly, SPS will have expanded access to both the WECC and ERCOT in order to buy and sell power, which should improve the economics and reliability of service to its native load customers.

Tres Amigas is a market expander. By increasing the geographic scope of the wholesale market, Tres Amigas will improve the efficiency of existing markets by eliminating a physical barrier that prevents marginal prices from moving closer together. The price divergence created by the physical trading barrier between the three asynchronous interconnections is often very large, as shown on page 9 above and in Attachment C. However, Tres Amigas cannot cause prices to rise above competitive levels because customers will not purchase transmission service from Tres Amigas unless it offers the opportunity to reduce costs in comparison with the substantial number of alternatives discussed above and over which Tres Amigas will have no control. Moreover, by committing to expand Tres Amigas to satisfy demand (as described in the next section of this Application), the Applicant is providing additional assurance to the Commission that it cannot raise prices by restraining the supply of transmission.

Tres Amigas also faces potential longer term competitive entry by other transmission developers. In the *Chinook Order*, the Commission noted that the potential construction of cost-based transmission on alternate paths provides an additional check

on negotiated pricing by a merchant transmission developer.¹¹ The Applicant cannot predict whether another party would be successful in using open access rules to get an alternative AC/DC transmission line constructed or one of the existing AC/DC ties upgraded, but the opportunity to use open access transmission rules to establish an alternative AC/DC path would appear to be no less difficult than in the case of Chinook and Zephyr, where simultaneous construction of cost-based transmission on several systems would be required to establish an alternative path.¹²

The Applicant also faces potential competitive entry by other developers with their own creative ideas and new technologies. In order to recover its investment in this project, the Applicant will have to sell transmission services through Tres Amigas for many years. Over time, the opportunities for employment of alternative technologies and uses of existing facilities in new ways, may expand. No one can predict with certainty whether the risk associated with these longer term alternatives is substantial, but this is a part of the market risk that the Applicant is going to assume.

In sum, the market will dictate the prices that Applicant will be able to receive. To the extent that transmission service through Tres Amigas has a high value, it will be the result of market conditions outside of the Applicant's control, and the prices that users pay for such transmission service will reflect the market value of delivering power across the superstation in lieu of multiple competitive options for selling and

¹¹ *Chinook Order* at 38 n.26.

¹² In order to create an alternative AC/DC tie between the interstate grid and ERCOT, it would be necessary to use the open access rules under Order No. 890 in conjunction with the Texas open access rules for the ERCOT side of the new interconnection..

buying power that are available to such users. The Applicant also cannot stand in the way of competitive entry, which could be a significant factor over the longer term.

C. Applicant's Expansion Commitment for Tres Amigas

Unlike the typical merchant transmission pricing proposal, the Applicant is making a two-part, voluntary commitment to expand as described below.

First, the Commission should understand that Tres Amigas is being designed specifically so that it can grow to meet demand. The design shown in Attachment A was chosen so that multiple interconnections can be made at each of the three AC/DC terminals and so that additional AC/DC converters can be readily added. The use of superconducting cable will allow for massive transfers between the terminals with even larger expansion capability. This design makes Tres Amigas significantly more expensive to build, and these additional costs increase the Applicant's market risk. If the Applicant intended to restrict the supply of its offering, it could have chosen a much lower cost design that does not provide the same flexibility for expansion.

Nonetheless, the Applicant can foresee a theoretical argument that it could have an incentive to restrict the size of Tres Amigas in order to increase the value of transmission services through the facility. For this reason, the Applicant is making the following two-part commitment. First, the Applicant will include in its OATT a commitment to expand the AC/DC terminals and/or the connecting DC lines between the three terminals within Tres Amigas in response to a request for firm transmission service through the facility that exceeds the available capacity of Tres Amigas at the time of the request. If the Applicant receives a request for transmission service that it cannot

accommodate with the existing capacity of Tres Amigas, it will either make the investment in expansion of Tres Amigas on a merchant basis (using the pricing authority granted by this Application), or if the Applicant believes that the market will not support the investment in an upgrade, the Applicant will offer to construct the expansion on a cost-of-service basis for any creditworthy entity that agrees to pay for the expansion. The latter is essentially the same obligation to build that transmission providers assume under the Order No. 890 OATT.

Second, the Applicant will expand the AC side of Tres Amigas to accommodate additional interconnections by any creditworthy entity that wishes to interconnect its transmission facilities with Tres Amigas and that is willing to bear the cost of such interconnection. In addition, the Applicant will not enter into any agreement with a third party to construct and own substation facilities on the AC side of Tres Amigas that does not include a commitment for that entity to expand (or permit expansion of) the AC substation facilities at Tres Amigas to accommodate additional interconnections. This commitment is at least equivalent to the interconnection obligations of transmission providers under Order Nos. 890 and 2004.

D. Description of Transmission Rights Across Tres Amigas

Although Tres Amigas is not a traditional transmission line project, the transmission service that the Applicant will offer is in many ways comparable to the services offered by other merchant transmission owners. The attractiveness of purchasing transmission service through Tres Amigas will depend on the economic value of moving power from one location to another, but between interconnections. Although

scheduled injections and withdrawals of power at Tres Amigas will be in close geographic proximity with one another, the value of power supplied and purchased at the scheduling points with each of the three AC/DC terminals will provide a proxy for marginal price differences at different locations on the grid, primarily because the three interconnections currently operate as largely autonomous markets with limited existing capability for price convergence. Just as the purchase of transmission rights over a merchant line like Chinook or Zephyr will create value for the buyer based on the economic benefit of moving power from one location to another over all or a portion of the transmission line projects, purchasing transmission rights through Tres Amigas will create value for the customer based on the economic benefit of moving power from one of the three asynchronous interconnections to another.

An important difference, however, is that Tres Amigas is expected to operate more like a power marketing hub than a long-haul transmission line like other merchant transmission projects such as Chinook and Zephyr. Therefore, the Applicant expects that the demand for transmission services through Tres Amigas is more likely to be most effectively met by offering a variety of short, intermediate and long-term services, rather than seeking commitments entirely from shippers that want to buy long-term transmission rights. For this reason, the Applicant is requesting some pricing flexibility that has not been sought in prior applications for merchant transmission projects, as discussed in subpart E. below

Consistent with the Commission's *pro forma* OATT, the Applicant proposes to offer for sale point-to-point transmission service rights from one scheduling

point to either of the other two scheduling points. For example, for an ERCOT seller, the firm rights will be defined in terms of the ability to schedule power from the ERCOT terminal to one of the other two terminals, at the SPP or WECC interconnections. A purchaser of transmission rights through Tres Amigas will therefore purchase firm point-to-point service from one delivery point to one receipt point. The service will also include the right to redirect schedules to an alternative delivery or receipt point on a firm or non-firm basis on the same basis as is permitted under the Commission's *pro forma* OATT. For example, a customer purchasing firm transmission service from the ERCOT terminal to the WECC terminal will have the right to redirect transmission service to the SPP terminal on a non-firm basis subject to availability, or to request to change its firm delivery and receipt point pairings if ATC exists for the change at the time of the request.

All rights to transmit power across Tres Amigas will be defined to include the right to resell the service in the secondary market. The Applicant will establish an OASIS site for the purpose of permitting purchasers of firm transmission rights across Tres Amigas to sell those rights in a secondary market. This site will be in operation by the time that the Applicant makes its first sale of transmission rights under the authority requested in this filing.

At some point in the future, the Applicant hopes to develop the capability to manage congestion across Tres Amigas using a market mechanism, such as using hourly price bids to establish scheduling priorities. However, the development of that capability in the unique context of Tres Amigas may take several years, and the Applicant does not want to delay the project in order to create and implement a market-based proposal for

managing congestion. Until that time, the Applicant will sell physical transmission rights based on firm transfer capabilities, consistent with the way in which transmission rights have been defined for other merchant DC transmission lines and for transmission services outside of the organized markets.

Prior to its first open season auction of transmission service rights, the Applicant will file a description of its proposed open season auction process (consistent with the process described in Subpart E. below) together with a modified version of the FERC OATT that is appropriate for transmission service through Tres Amigas.¹³ The OATT will ensure that the Applicant does not engage in undue discrimination with respect to selling rights to deliver power across Tres Amigas. The Applicant will provide support for all modifications that it proposes to the FERC OATT in the Section 205 filing.

E. Description of Tres Amigas' Open Season Auction Process

This Application includes a request for Commission approval *at this time* of the following process for establishing prices for the sale of transmission service through Tres Amigas. As noted above, the Applicant will include a description of this process in

¹³ The Tres Amigas OATT will include provisions for point-to-point services but not network integration service. Tres Amigas does not have any “network load” and does not envision Tres Amigas being used to import power to serve any discrete network loads directly connected to its facilities. However, any entity selling or purchasing power delivered through the TASS using firm transmission rights should be able to designate its transactions as a Network Resource under the FERC OATT if the transaction otherwise satisfies the standards for being a Network Resource. Thus, the TASS can be used to facilitate the provision of network integration service on any other transmission provider’s system under Order No. 890. In the unlikely event that a third party requests network integration service, Tres Amigas will either make a prompt Section 205 filing for such service or will ask the Commission to rule on whether providing network integration service is appropriate.

its OATT filing that will be made subsequently under Section 205. In the *Chinook Order*, the Commission noted that it must be able to review the open season process to ensure it is conducted fairly and no discrimination occurs.¹⁴ In addition to filing a description of the process, the Applicant will file reports on the results of its open season auctions as directed by the Commission in that case.

The Applicant anticipates holding successive auctions for transmission rights through Tres Amigas prior to the commercial operation date of the facility. Some of the capacity of Tres Amigas for each point of delivery and receipt pairing will be made available during an initial auction, which will take place before Tres Amigas is constructed, with the intent that it will bring in revenue to support financing and construction of the project. The initial (and subsequent) open season auctions will be designed such that transmission rights will be offered in time blocks, with some capacity sold on a twenty year basis, ten year basis, five year basis, one year basis and/or monthly basis. The Applicant will design the auction to make its transmission service offering as valuable as possible to the market. This means that the Applicant will decide how much capacity to offer in the initial auction and the time periods that service will be offered based on its assessment of the market at that time. The Applicant will be holding meetings with potential customers prior to its first open season auction in order to learn about the marketplace and get input into the best structure for its auctions.

¹⁴ *Chinook Order* at PP 40-41.

The Applicant anticipates holding one or more additional open season auctions prior to the time that Tres Amigas enters commercial operation. In subsequent auctions, the Applicant may vary the time periods offered for transmission service from the initial auction based on the outcome of the initial auction, meetings with potential customers, and its assessment of how to structure the auctions to maximize the value of Tres Amigas in the marketplace.

By the time that Tres Amigas enters commercial operation, the Applicant will make no less than 80 percent of the initial capacity of Tres Amigas at each terminal available for sale in a pre-commercial open season auction. The Applicant proposes to retain the right to maintain up to 20 percent of the capacity at each terminal for sale in shorter term open season auctions after Tres Amigas enters commercial operation, or pursuant to requests for transmission services under the Applicant's OATT. The Applicant will post ATCs for deliveries between each terminal for this purpose. Thus, the Applicant will retain no more than 20 percent of the capacity at any terminal for sale in competition with transmission service rights that may be offered by other holders of transmission rights acquired in the pre-commercial open season auctions. Notably, the Commission has consistently used 20 percent as a safe-harbor threshold for determining whether a market seller can exercise market power.¹⁵

¹⁵ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, 72 Fed. Reg. 39,904 (July 20, 2007), FERC Stats. & Regs. ¶ 31,252 at P 89 (2007), *order on clarification*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, 73 Fed. Reg. 25,832 (May 7, 2008), FERC Stats. & Regs. ¶ 31,268 at P 37 (2008), *order on reh'g*, Order No. 697-B, 73 Fed. Reg. 79,610 (Dec. 30, 2008), FERC Stats. & Regs. ¶ 31,285 (2008); *order on reh'g*, Order No. 697-C, 127 FERC ¶ 61,284 (2009).

However, once Tres Amigas enters commercial operation, one hundred percent of the available capacity at each of the scheduling points will either have been made available for sale in the open season auctions or will be made available under the OATT. The Applicant commits that all of the available capacity at each terminal will be offered for sale at all times when Tres Amigas is in commercial operation. At no time will Tres Amigas withhold transmission capacity from the market.¹⁶

The pricing flexibility that Tres Amigas seeks is consistent with its status as a merchant transmission owner and is necessary to provide the Applicant the opportunity to maximize the value of its offering and earn a return on investment that is commensurate with the risks it is assuming in the development of this project. As noted earlier, unlike other merchant transmission projects, Tres Amigas should operate like a power marketing hub, so it is important to the economic success of the project that the Applicant be able to provide transmission service offerings that are consistent with the market demand, which may include a substantial short-term component.

In connection with every auction that it holds, and in every instance in which it may sell short-term transmission service, the Applicant commits that it will sell transmission services on a non-discriminatory basis to the highest creditworthy bidder.

Credit requirements for bidders will be set forth in the Applicant's OATT. The Applicant

¹⁶ The Applicant's ability to structure its offering as long, medium and short-term sales, and to time the availability of different service terms in order to maximize value is not equivalent to withholding. This is standard behavior by competitive firms that typically must choose whether to sell their products in forward markets or take the risk of sales in spot markets. So long as one hundred percent of the available capacity of Tres Amigas is made available for sale at all times
(Continued ...)

will not hold its first open season auction of transmission rights until the Commission has accepted its OATT for filing under Section 205, which will include a description of the open season auction process.

F. Possible Bilateral Sales to Anchor Customers

At the present time, the Applicant's plans call for it to sell rights to transmission across Tres Amigas during the project's development and construction phases only pursuant to the periodic, pre-commercial open season auctions described in the prior section of this Application. However, the Applicant's current plans depend on it being able to finance Tres Amigas on commercially reasonable terms based on these offerings. In order to make Tres Amigas an economically viable project, and to support early development efforts, it may be necessary for the Applicant to sell some rights through Tres Amigas to unaffiliated third parties pursuant to bilaterally negotiated agreements, although that is not the Applicant's preference.

If bilateral sales to one or more "anchor customers" are necessary, the Applicant will not enter into any bilateral contract with an anchor tenant without first making an informational filing with the Commission describing the process used to enter into such contract. In addition, the Applicant will file with the Commission the identity of any buyer under a bilateral agreement together with a description of all of the material terms of sale. However, if the Applicant uses bilateral contracts to sell some of the rights through Tres Amigas, these arrangements would not constrain the Applicant's

after commercial operation, the Applicant will not be able to raise prices above competitive levels by withholding supply from the market.

ability to later sell transmission services at auction or on a shorter term basis under its OATT at different prices based on market conditions at the time of sale.

In the *Chinook Order*, the Commission recognized that permitting merchant transmission developers to sell some capacity to anchor customers via negotiated, bilateral contract may be necessary to permit merchant transmission projects to move forward:

We acknowledge that as a practical matter, merchant transmission developers face difficulties financing large transmission projects In this respect, the financial commitments made by anchor customers prior to an open season provide crucial early support and certainty to merchant transmission developers, which enables them to gain the critical mass necessary to develop these projects.

Chinook Order at P 44. The Commission noted that this model has been used successfully in the natural gas industry. Accordingly, the Commission concluded that “the anchor customer model can play a useful role in the continued development of merchant transmission projects.” *Id.* at P 46.

In the *Chinook Order*, the Commission permitted Chinook and Zephyr to sell up to fifty percent of the capacity of their merchant transmission lines pursuant to negotiated bilateral agreements with anchor customers prior to the open season. The Applicant will not exceed this same fifty percent threshold. The Applicant therefore requests authority to sell pursuant to bilateral agreement up to fifty percent of the capacity at each scheduling point (terminal). For example, if the Applicant were to determine that the optimal size for the initial interconnection with ERCOT were to call for two 750 MW converter stations at the ERCOT terminal, the Applicant would reserve

the right to sell up to 750 MWs of the 1,500 MW total at the ERCOT interconnection pursuant to bilateral agreements that would be filed with the Commission. The Applicant does not intend that any of its owners or affiliates will be an anchor customer, and it will not enter into any bilateral agreement with an owner or affiliate without obtaining the Commission's prior approval under Section 205.

The Applicant wishes to make clear that it is not its preference to sell transmission service via bilateral contracts entered into outside of the open season auction process described above, and it will exercise this option only if it provides the most effective vehicle for supporting the financing of Tres Amigas on reasonable commercial terms.

G. Application of the Four Merchant Pricing Standards Adopted in the *Chinook Order*

The Applicant believes that it has demonstrated above that it should be authorized to sell transmission services at negotiated rates and that the terms of such negotiated pricing will be just and reasonable. In this Section, the Applicant will address each of the standards for negotiated transmission service rates adopted in the *Chinook Order*, which are the Commission's current standards for obtaining negotiated pricing for transmission service.

Prior to the *Chinook Order*, the Commission applied ten criteria to determine whether an applicant should be granted negotiated pricing for a merchant transmission project. In the *Chinook Order*,¹⁷ the Commission consolidated its analysis

¹⁷ *Chinook Order* at P 37.

into a review of the following four factors, which are designed to focus the Commission's analysis on satisfying the requirements of Section 205 of the FPA:

1. Whether the rates will be just and reasonable;¹⁸
2. Whether there is potential for undue discrimination;¹⁹
3. Whether there is potential for affiliate abuse;²⁰ and
4. Whether the proposed merchant facility will satisfy regional reliability and operational efficiency requirements.²¹

As shown below, the Applicant satisfies all four standards for Tres Amigas.

1. Tres Amigas' Rates Will Be Just and Reasonable

In considering this factor, the Commission stated that it would focus first on whether the merchant transmission developer has assumed the market risk for its project, including whether it proposes to build within its own or an affiliated entity's footprint as a regulated utility company. As discussed in detail above, the Applicant is assuming all of the market risk associated with Tres Amigas, including risks that do not exist for other merchant transmission projects.²² As shown, the Applicant is not a regulated utility with its own service territory or captive customers and has no affiliates that are regulated utilities with captive customers. The Applicant will be able to recover the cost of Tres Amigas only if and to the extent that it is able to find willing purchasers of transmission rights through Tres Amigas. Tres Amigas also will not reduce any of the

¹⁸ *Id.* at PP 38-39.

¹⁹ *Id.* at PP 40-47.

²⁰ *Id.* at PP 48-51.

²¹ *Id.* at PP 52-53.

²² *See supra* pp. 14 to 17.

multiple, existing opportunities that market participants have to buy and sell power without acquiring service through Tres Amigas.

The Commission also stated that it would evaluate whether the merchant transmission developer owns other transmission facilities in the region and whether the developer can erect barriers to entry or has an incentive to withhold capacity from the market. As set forth above, the Applicant and its owners and affiliates do not own or have an equity interest in any other generation or transmission facilities within several hundred miles of Tres Amigas, and the interests that they do have in isolated facilities do not provide the Applicant any ability to restrict access, raise prices above competitive levels or restrict competitive entry into the marketplace.²³

Tres Amigas also has no incentive or ability to withhold transmission capacity from the market. First, the Applicant has committed that all of the available capacity at Tres Amigas will be made available for sale at all times. Second, as noted above, the Applicant is investing additional sums of money in order to design Tres Amigas to be expandable. The Applicant is assuming an obligation to expand Tres Amigas that merchant transmission owners have not normally assumed. This commitment should remove any theoretical incentive that the Applicant might have to raise prices by artificially restricting the supply of transmission service through Tres Amigas.

²³ See *supra* pp. 4 to 8.

The Applicant has also shown above that it has no market power over any potential user of Tres Amigas.²⁴ All use of Tres Amigas will be voluntary, and the potential users of Tres Amigas all have myriad other opportunities to buy and sell power in their respective markets, over which the Applicant will have no control whatsoever. Tres Amigas will expand market opportunities and provide opportunities for efficiency-enhancing transactions that cannot take place today because of the barrier that exists between the three asynchronous grids.

Finally, Tres Amigas has committed above to making all transmission service sold through Tres Amigas available for sale by customers in a secondary market and to create an OASIS site in order to facilitate secondary sales of such rights.²⁵

2. The Applicant Will Not Engage in Undue Discrimination

In the *Chinook Order*, the Commission stated that it will look to the merchant developer's open season process and OATT to ensure that no undue discrimination can occur. The Applicant has described above its proposed open season auction process.²⁶ That process would not permit the Applicant to favor any one customer or another, nor does the Applicant have any incentive to do so. All transmission service will be sold to the highest bidders. Moreover, the Applicant has committed that it will not sell transmission service pursuant to a bilateral contract with an anchor tenant without making an informational filing with the Commission describing the

²⁴ See *supra* pp. 17 to 22.

²⁵ See *supra* p. 25.

²⁶ See *supra* pp. 27 to 30.

process by which the anchor contract was obtained and identifying the name of the buyer and the substantive terms of the sale.²⁷

The Applicant has also committed that it will file an OATT based on the Commission's Order No. 890 OATT under which it will provide non-discriminatory, point-to-point transmission services to the extent that transmission capacity is available at any of the terminals to provide additional service.²⁸

Finally, as required by the *Chinook Order*, the Applicant will submit a report to the Commission describing the results of the open season process after each of the periodic open season auctions that it holds. This report will set forth the quantity and term of transmission service sold in the auction, the prices obtained in the auction, and the number and identity of the parties purchasing transmission service.

3. No Affiliate Abuse Is Possible Here

In the *Chinook Order*, the Commission found that affiliate abuse could occur "in situations where 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 line." *Chinook Order* at P 48. The Applicant does not intend to transact with any of its owners or affiliates at Tres Amigas. This means that neither the Applicant nor any owner or affiliate thereof will enter into a bilateral agreement with Tres Amigas as an anchor customer; neither the Applicant nor any owner or affiliate will participate in the open season auction to purchase transmission rights across Tres

²⁷ See *supra* pp.31 to 33.

²⁸ See *supra* pp. 24 to 26.

Amigas; and neither it nor any owner or affiliate will acquire transmission service across Tres Amigas under the Applicant's OATT or in the secondary market.

In addition, the Applicant and its owners and affiliates have no intention of moving power through Tres Amigas using their own or transmission rights acquired by others, with the exception of selling ancillary services. The Applicant and its owners and affiliates commit that they will not sell power that is delivered through Tres Amigas without first obtaining the Commission's approval under Section 205. This includes obtaining prior Section 205 approval to sell ancillary services from power generated at Tres Amigas.²⁹

4. Tres Amigas Will Enhance Regional Reliability and Operational Efficiency

In the *Chinook Order*, the Commission stated that merchant transmission developers would be required to satisfy all applicable NERC and regional reliability council reliability requirements. *Chinook Order* at P 53. The Commission further stated that merchant transmission developers would be encouraged "to participate in regional planning processes required by Order No. 890 as their projects move forward." *Id.* The Commission also stated its preference for merchant transmission developers to transfer operating authority for their projects to an ISO or RTO if the project is located in or adjacent to an RTO or ISO. *Id.* at P 52.

²⁹ The Applicant will make a Section 205 filing requesting authorization to sell ancillary services, which may include the right to sell firming energy from onsite battery storage, at a later date. The Applicant is not asking the Commission to approve the rates for any such services or sales at this time.

Tres Amigas will meet all applicable reliability requirements. As noted earlier, the Applicant intends that Tres Amigas will operate as a NERC and WECC approved Balancing Authority Area. The Applicant has initiated discussions with these entities and has received a positive initial response. The Applicant will need WECC approval to operate as a Balancing Authority Area. In addition, the Applicant will satisfy all applicable reliability standards and requirements associated with being a transmission owner and operator. If the Commission believes it is necessary or appropriate, the Applicant will submit a written confirmation of its compliance with all applicable reliability requirements to the Commission prior to commencing commercial operation.

The Applicant will participate in all Order No. 890 regional planning processes that may be applicable to the operation of Tres Amigas. In addition, the Applicant proposes to commence its own regional planning process, to which any and all interested parties will be invited, in order to discuss and prepare plans that will facilitate the most effective use of Tres Amigas, its full integration with the electric systems in the region, and potential expansion of the superstation. The Applicant will include the provisions for its proposed planning process in its OATT filing.

Tres Amigas will be its own Balancing Authority Area under the WECC and will not be within any RTO. Tres Amigas will be interconnected with ERCOT and the SPP, however, which both operate as RTOs. Depending on the nature and location of the facilities interconnecting with Tres Amigas from the WECC, it could also be interconnected with the California ISO at some point. Tres Amigas does not propose to become an RTO or ISO, but Tres Amigas will point out to the Commission that, as noted

above, the Applicant and its owners and affiliates do not intend to act as market participants except to the extent that the Applicant will sell transmission services through Tres Amigas and ancillary services from onsite battery storage. Accordingly, like an RTO, the Applicant will not have any reason to favor any power seller over another.

VII. COMMUNICATIONS

The Applicant requests that all filings and other correspondence in this proceeding be sent to the following individuals, both of whom should be included on the Commission's official service list in this proceeding.

David B. Raskin
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036
202.429.6254
draskin@steptoe.com

Phillip G. Harris
Managing Partner and CEO
Tres Amigas LLC
200 W De Vargas Street, #7
Santa Fe, NM 87501-2643
970.731.1049
phillip.g.harris@gmail.com

VIII. REQUEST FOR WAIVER OF FILING REQUIREMENTS

In the *Chinook Order*, the Commission granted waivers of certain filing requirements that it found were not applicable to merchant transmission developers. The Applicant requests the same waivers here.

Chinook and Zephyr requested waivers of the filing requirements in Parts B and C of Part 35 of the Commission's regulations, except for sections 35.12(a), 35.13(b), 35.15 and 35.16, plus waiver of the requirement to file an annual FERC Form 1. The Commission granted this request for waivers, finding that in the context of negotiated rates, and where the public utility seller did not have any captive customers, the Commission did not need the above information in order to carry out its regulatory

responsibilities.³⁰ The same factors that caused the Commission to grant the requested waivers to Chinook and Zephyr apply here.

Respectfully submitted,

/s/ David B. Raskin

David B. Raskin
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, NW
Washington, DC 20036
(202) 429-3000

Attorney for Tres Amigas LLC

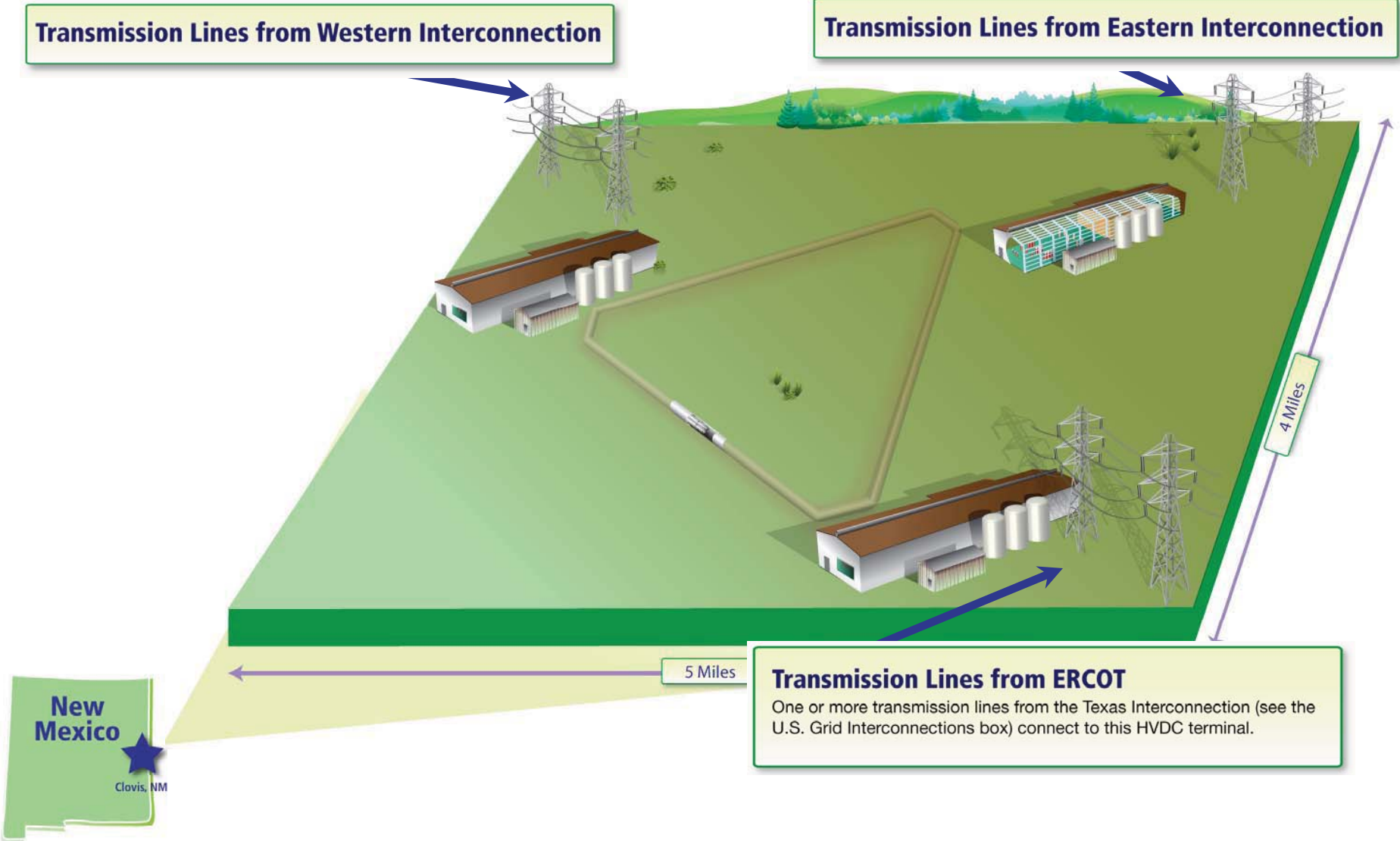
Dated: December 8, 2009

³⁰ *Chinook Order* at PP 68-69.

Attachment A



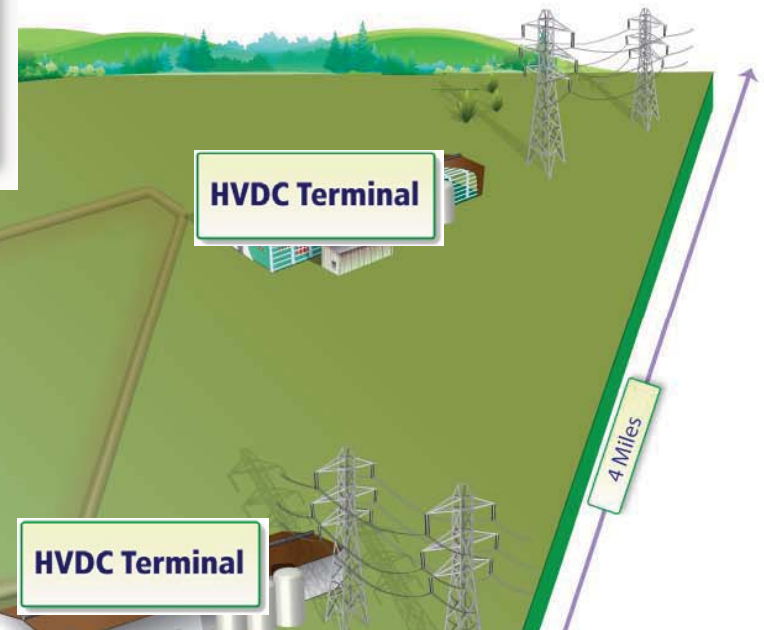
The Tres Amigas SuperStation





HVDC Terminal

When bringing power into the Tres Amigas SuperStation, the HVDC terminals convert alternating current (AC) power in the transmission lines to direct current (DC) power and then send that power through superconductor pipelines. When supplying power from Tres Amigas, the HVDC terminals convert the DC power on the superconductor pipeline back to AC power suitable for the transmission line that will be carrying it to distant electrical demand centers. Power transfer between any of the transmission lines connecting at Tres Amigas can only be accomplished through this conversion process.



HVDC Terminal – What's Inside

Each HVDC terminal looks like a standard utility substation with the addition of a building that houses the actual HVDC converter. Inside the converter building are high voltage power electronics that convert electricity back and forth between AC and DC (direct current) power. Tres Amigas SuperStation uses what are known as Voltage Source Converters (VSC), which enable the unique three-way grid interconnection. The substation also houses cooling equipment for the power electronics and the superconductor pipeline.



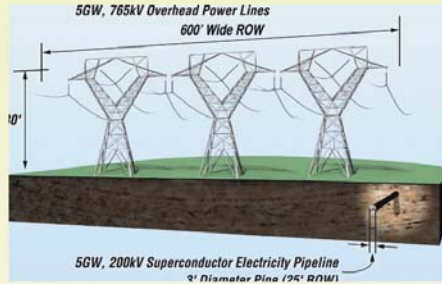
DC Superconductor Ring

Key to the Tres Amigas SuperStation is an underground pipeline of direct current (DC) superconductor cables less than three feet in diameter capable of carrying more than 5,000,000,000 watts (5 gigawatts) of electricity with no electrical losses; enough electricity to power 2.5 million homes. Superconductor cables:

Enhance efficiency: When the station is running at full power, the superconductor pipeline can save as much as 60,000,000 kW-Hrs of energy annually compared with conventional transmission technology. That's equivalent to the electricity usage of 30,000 homes and a 40,000 ton reduction in CO2 emissions.

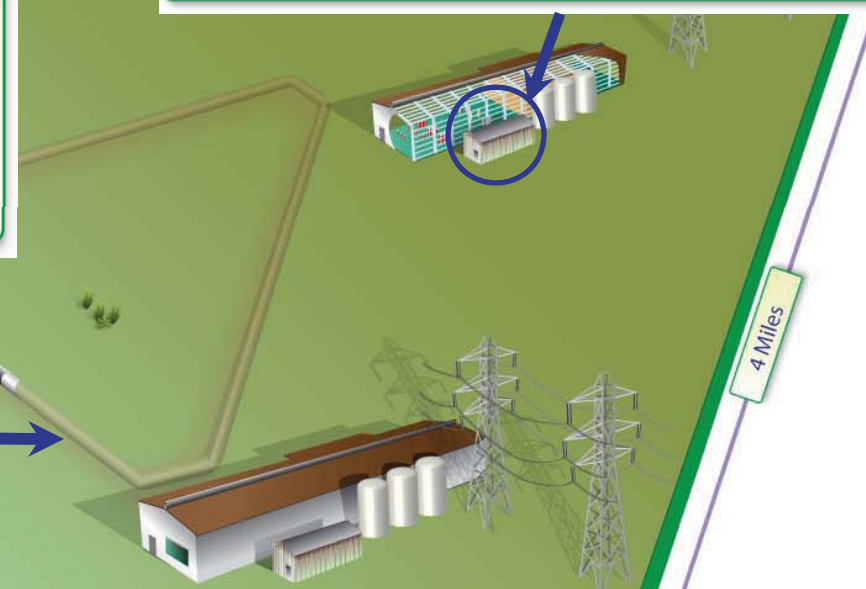
Are out of sight: A single, underground superconductor pipeline can carry as much power as three, 765kV AC overhead transmission lines (see figure).

Increase power security: Unlike overhead lines, underground cables are virtually immune to weather-related outages, the most common cause of power disruptions. Similarly, underground placement makes them less subject to vandalism and other forms of willful attack.



Energy Storage Battery

Each HVDC terminal is equipped with an advanced battery system to provide both back up to the renewable energy purchased by Tres Amigas to run the facility and to provide what are termed "ancillary services" support to the connecting AC systems.



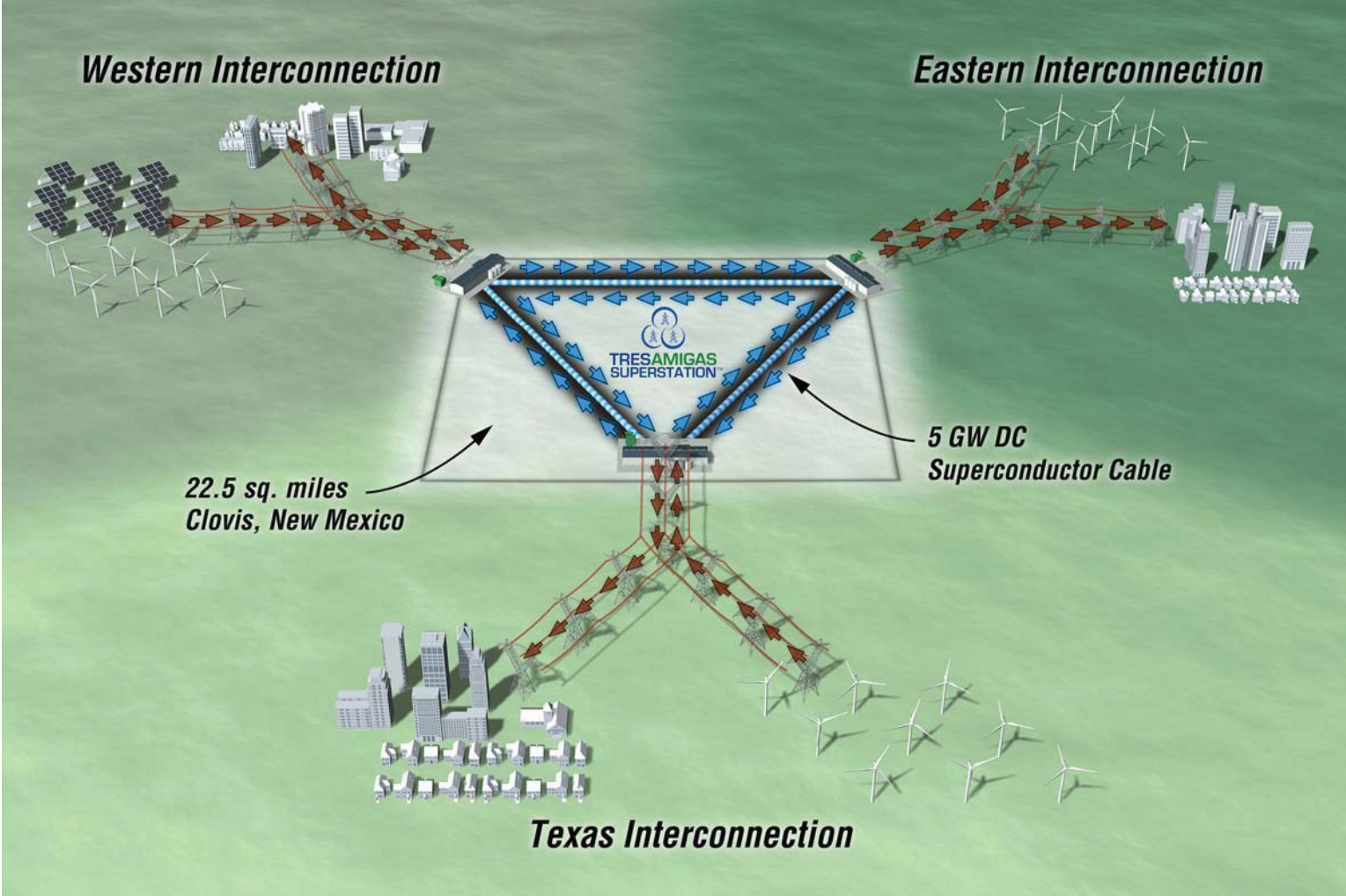
What are Superconductors?

A superconductor is a perfect conductor of electricity; it carries direct current with 100% efficiency. When properly cooled, superconductor wires provide significant advantages over conventional copper and aluminum wires because they can transmit 150 times more electricity than conventional wires of the same size.



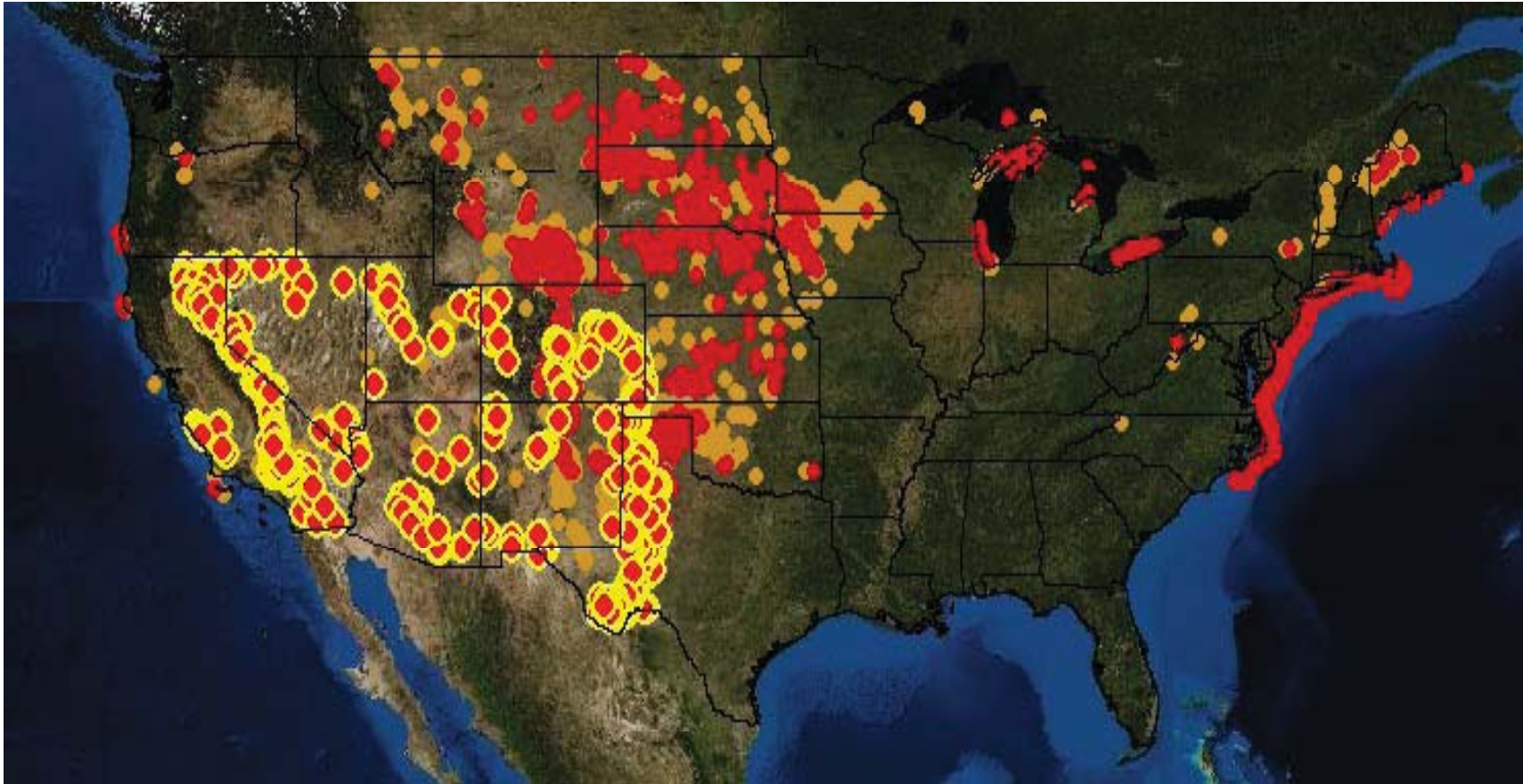


The Tres Amigas SuperStation



Attachment B

The Location: Regional Renewable Resource Potential



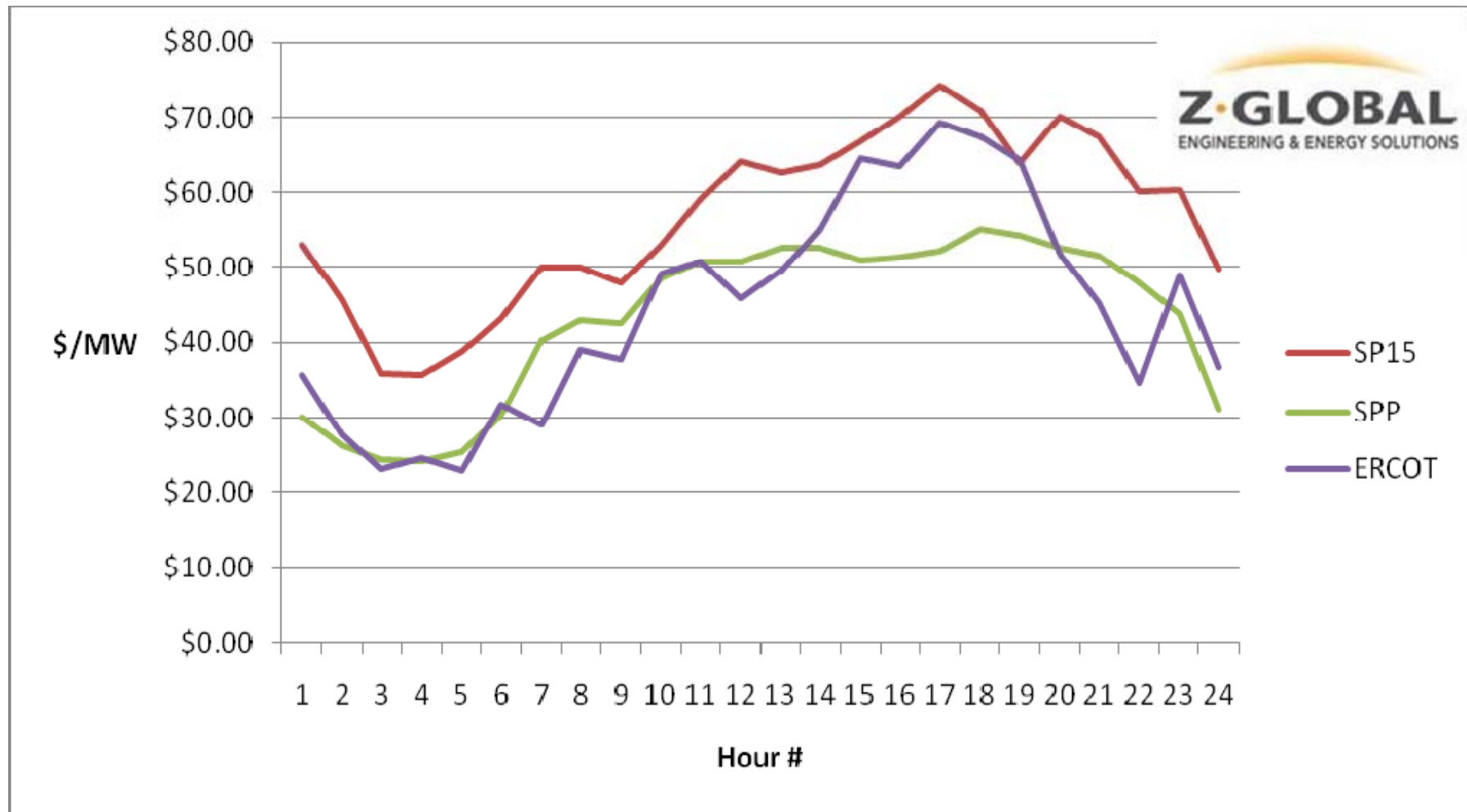
Significant Wind & Solar Development Potential

Attachment C

Sample data:



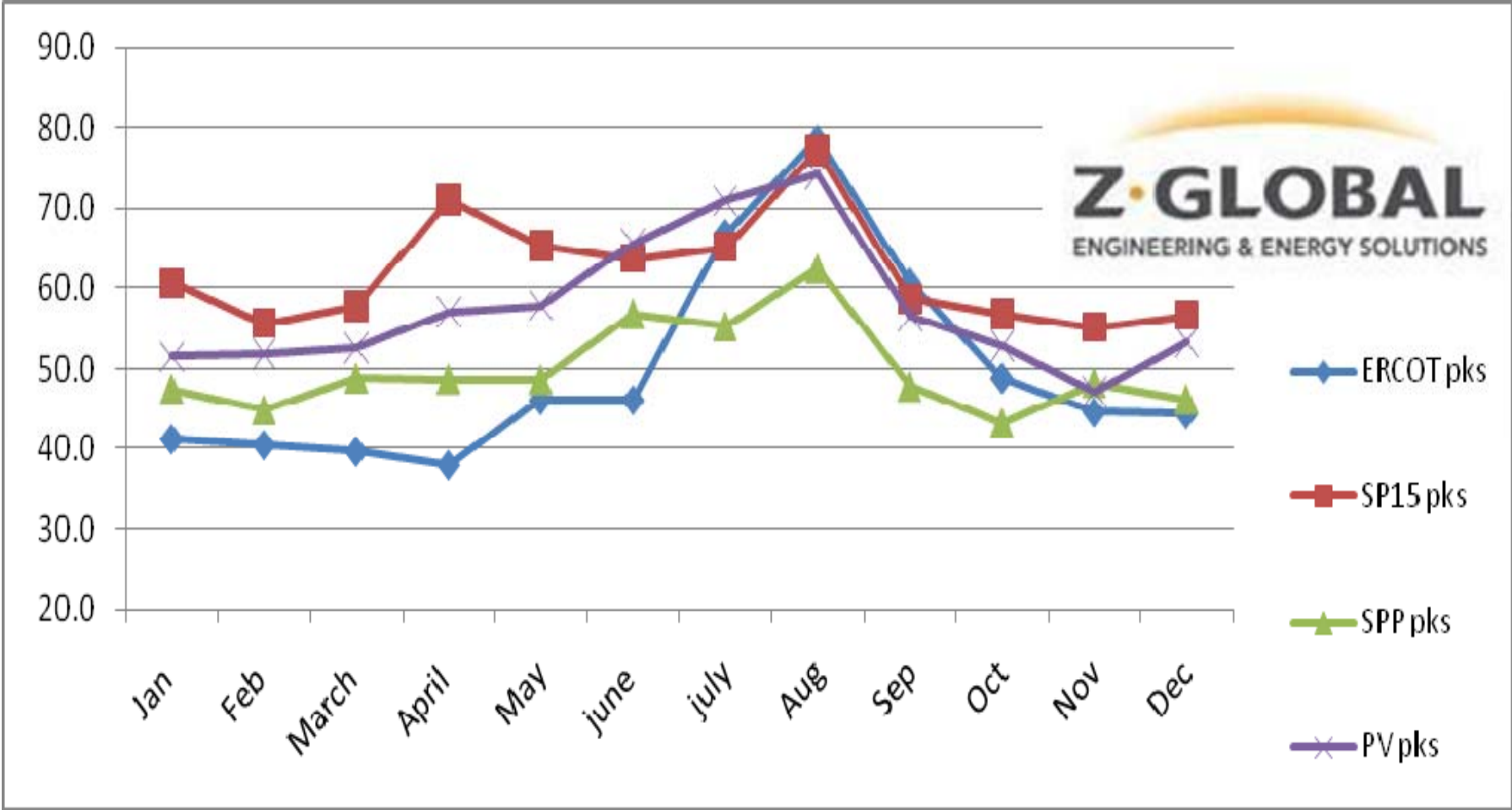
2008 On-Peak Hourly Averages



Source: SPP DSS and MISO website at http://www.midwestmarket.org/home/Market%20Reports/?type=rt_imp&list=month and ERCOT website at <http://www.ercot.com/mktinfo/services/bal/index.html>



Monthly Average High Demand Period Energy Prices (August 2007-July 2009)



Source: SPP DSS and MISO website at http://www.midwestmarket.org/home/Market%20Reports/?type=rt_imp&list=month and ERCOT website at <http://www.ercot.com/mktinfo/services/bal/index.html>



Regional 2008 energy prices (All hrs)

Region(hub)	Average Price \$/MWh (hrs 1- 24)	Maximum Price	Minimum Price	Median Price	Standard Deviation	Volatility of the Distribution
ERCOT (West)	\$53.42	\$1,999.00	-\$523.75	\$48.77	86.67	162%
SPP (West)	\$50.94	\$542.56	-\$153.36	\$46.14	30.36	60%
MISO (Cinn)	\$49.62	\$467.46	-\$242.96	\$49.62	36.11	73%
ICE (Palo Verde)	\$64.73	\$244.84	\$15.99	\$60.29	27.30	42%
CAISO(SP15)	\$69.74	\$399.99	-\$25.12	\$61.45	45.19	65%

Source: SPP DSS and MISO website at http://www.midwestmarket.org/home/Market%20Reports/?type=rt_imp&list=month and ERCOT website at <http://www.ercot.com/mktinfo/services/bal/index.html>

Attachment D

PNM Resources
Alvarado Square
Albuquerque, NM 87158-2824
jeff.sterba@pnmresources.com
www.pnmresources.com
505.241.4568
Fax: 505.241.4343

Jeffrey E. Sterba
Chairman & CEO



October 28, 2009

Mr. Phillip G. Harris
Tres Amigas, LLC
200 W. De Vargas Street #7
Santa Fe, NM 87501-2643

Dear Mr. Harris:

Thank you for contacting PNM Resources, Inc. with information about the proposed Tres Amigas Super Station ("Station") planned to be located near Clovis, New Mexico.

We share your belief that the Station could provide an excellent growth engine for business, and particularly renewable energy, in the State of New Mexico and the other areas that can be interconnected with the Station. As you know, PNM Resources is a strong supporter of cost effective renewable resources and is currently processing a lengthy interconnection queue of applicants seeking access to the PNM transmission system. The Station could represent a new market exchange point that allows for the benefit of clean renewable energy to be shared among three different regions of the country.

Accordingly, this letter will confirm that PNM Resources has an interest in working with and supporting your group to help make the Station a reality. PNM support could involve the construction of a new high voltage transmission lines to the Station, once it becomes operational, from an appropriate connection point on our transmission grid, such that our customers and potentially others could obtain the benefit of renewable energy generated both in and outside of New Mexico. Our involvement could very well also include other development activities.

Obviously, any of our activities with respect to the Station would be subject to certain regulatory matters being satisfactorily resolved or concluded in a manner beneficial to our rate payers and shareholders including, among other things, the preservation of the current status of the Electric Reliability Council of Texas, as well as to our obtaining suitable siting and ratemaking treatment from the regulatory agencies having jurisdiction over these matters and to such other financial accommodations as we may require.

Thank you again for bringing this project to our attention, and we look forward to the future development of this new project.

Best regards


Jeffrey E. Sterba



Riley Hill
President and CEO
Southwestern Public Service Company

P.O. Box 1261
Amarillo, Texas 79105-1261
Phone: 806.378.2922
Fax: 806.378.2995

December 3, 2009

Via Certified Mail, Return Receipt Requested #7099 3400 0016 0282 5329

Mr. Phillip G. Harris
Tres Amigas, LLC
200 West De Vargas Street #7
Santa Fe, NM 87501-2643

Dear Mr. Harris:

Thank you for contacting Xcel Energy concerning the proposed Tres Amigas HVDC Superstation.

The proposed Superstation site, near Clovis, New Mexico, and in Xcel Energy's Southwestern Public Service Company (SPS) service territory, provides a unique opportunity to connect all three synchronous North American interconnections, bringing potential benefits to electric consumers across all three regions.

As you know, Xcel Energy is the #1 provider of wind power in the United States. While we are gratified to be leading in the delivery of environmentally-friendly electricity, we are particularly committed to bringing cost effective renewable energy to our customers. Consequently, Xcel Energy views the Superstation as having the potential for enhancing access to additional renewable resources on all of the interconnections that could benefit not only our SPS customers, but electric consumers outside of SPS who may have only limited access to renewables.

As a New Mexico utility, Xcel Energy has strived to support an effective state energy policy that fosters economic development for all of New Mexico. I want to express Xcel Energy's interest in supporting your group with the development of the transmission connection from your planned facility to the Southwest Power Pool (SPP) grid. In that regard, and to ensure that the potential for the Superstation is maximized, Xcel Energy believes it is important and appropriate that any facility designed to interconnect the Superstation must go through the regional transmission planning processes of the SPP.

Xcel Energy is well aware of, and sensitive to, the concerns that a proposed new high voltage transmission line can raise among all stakeholder groups, including electric consumers that pay for transmission lines, state and local governmental entities, company shareholders, and, significantly, land owners along potential rights-of-way both within and outside of New Mexico. Xcel Energy's involvement in and support for the Superstation and the new transmission facilities will be subject to appropriate

support and favorable ratemaking treatment from our regulators. It is precisely for this reason that we are convinced that the new transmission interconnections required for the Superstation successfully pass through the SPP regional planning process.

Teresa Mogensen will be your primary contact from Xcel Energy and can be reached at (612) 330-7947. Thank you again for your interest in working with Xcel Energy on this project.

Sincerely,

A handwritten signature in cursive script that reads "Riley Hill". The signature is written in black ink and is positioned above the printed name and title.

Riley Hill
President & CEO
Southwestern Public Service Company

Attachment E



Hunter Hunt
President

Sharyland Utilities, L.P.
1900 North Akard Street
Dallas, Texas 75201-2300
214-978-8930
Fax: 214-978-8989

October 12, 2009

Mr. Phillip G. Harris
Tres Amigas, LLC
200 W De Vargas Street # 7
Santa Fe, NM 87501-2643

Dear Mr. Harris,

Thank you for contacting Sharyland Utilities ("Sharyland") with information about the proposed Tres Amigas Station ("Station") near Clovis, New Mexico.

Sharyland is writing to confirm our interest in constructing a new high voltage transmission line that would interconnect the proposed Station to the Electric Reliability Council of Texas ("ERCOT"), once the Station becomes operational.

As you know, the Public Utility Commission of Texas ("PUCT") has directed Sharyland to construct significant new transmission facilities, including four collection stations, in the Panhandle and South Plains regions of Texas as part of the Competitive Renewable Energy Zone ("CREZ") process. Once completed, Sharyland's CREZ facilities will be the closest ERCOT facilities to the Station in New Mexico.

Please note that our interconnection with the Station would be contingent upon the following: (1) the costs of extending transmission facilities from our currently planned CREZ facilities would be recovered through our PUCT regulated rates; and (2) our interconnection with the Station in New Mexico would not alter the present status of both Sharyland and ERCOT as being solely under the regulatory jurisdiction of the PUCT; and (3) receipt of any regulatory approvals by the New Mexico Public Regulation Commission and PUCT for the construction of our interconnection.

Thank you again for bringing this project to our attention, and we look forward to the future development of this project.

Best regards,

A handwritten signature in black ink, appearing to read "Hunter L. Hunt", written in a cursive style.

Hunter L. Hunt

Attachment F

November 18 , 2009

Mr. Harald Dirdal
c/o Scandia Wind Southwest, LLC
PO Box 783
Bovina, TX 79009

Letter of Intent

Dear Harald:

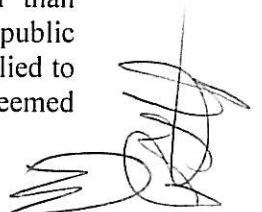
Scandia Wind Southwest, LLC ("Scandia") is the developer of a proposed 5 GW wind project in Parmer, Sherman and Dallam Counties, Texas (the "Mariah Project"). Tres Amigas, LLC ("Tres Amigas") is the developer of a three-node AC/DC converter station in New Mexico (the "SuperStation") that will provide the first common electric interconnection of the nation's three power grids (WECC, SPP, and ERCOT), thereby facilitating development of renewable energy resources; enabling wind-power to access now foreclosed end markets..

As the sponsor of the Mariah Project, Scandia has an interest in cooperating with Tres Amigas to promote development of the Superstation, and Tres Amigas has a reciprocal interest in cooperating with Scandia to promote the development of the Mariah project. The parties therefore wish to explore in further discussions the nature of such prospective cooperation as set forth in this letter of intent ("LOI").

1. Non-Binding. This LOI is a preliminary expression of intent and shall not create any legally binding rights or obligations enforceable against any party hereto except as otherwise expressly stated herein. Legally binding rights and obligations, if any, shall be subject to execution and delivery by the parties of definitive agreements applicable to prospective cooperation and matters related thereto.

2. Term. For a period of 180 days from the date hereof (such period, the "Term"), the parties hereto shall in good faith seek to determine the commercial and technical feasibility of prospective cooperation between them; provided that nothing herein shall require the parties to implement such cooperation and that any party hereto may terminate its participation therein at any time without cost or obligation. If upon expiration of the Term the parties have not been able to reach an accord as to the feasibility of prospective cooperation, this LOI shall (unless extended by mutual agreement) terminate without cost or obligation to any party.

3. Confidential Information. Except as otherwise stated below, all information exchanged by the parties hereto with respect to prospective cooperation shall be deemed confidential, shall not be disclosed by the receiving party to any third party other than the receiving party's professional advisors, shall at the request of the disclosing party be returned or destroyed, and shall not be used by the receiving party for any purpose other than evaluating the feasibility of such cooperation; provided that information that is in the public domain, was in the possession of the receiving party prior to the date hereof, or is supplied to the receiving party by a third party with legal entitlement to do so shall not be deemed

A handwritten signature in black ink, appearing to be a stylized name, located in the bottom right corner of the page.

confidential for purposes hereof. No party hereto shall make any public announcement of or otherwise disclose such cooperation without the express written consent of the other parties. The provisions of this Section 3 shall survive termination or expiration of this LOI and shall be enforceable against the parties hereto (including both legal and injunctive remedies) during the Term hereof and for a period of two (2) years after such termination or expiration.

4. Governing Law. This LOI shall be governed by the law of New Mexico without regard to the conflict of laws provisions thereof.

If the foregoing correctly sets forth our understanding, please sign and return the duplicate copy hereof enclosed.

Sincerely

Tres Amigas, LLC

By 

Accepted the day and year
first above written:

Scandia Wind Southwest, LLC

By 

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on the Public Utility Commission of Texas, the New Mexico Public Regulation Commission, Public Service Company of New Mexico and Southwest Public Service Corporation.

Dated at Washington, DC, this 8th day of December, 2009.

/s/ David B. Raskin

David B. Raskin
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, NW
Washington, D.C. 20036
(202) 429-3000