

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

**Ameren Transmission Company
Lucky Corridor, LLC
Mora Line, LLC**

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Docket No. ER20-____-000

**REQUEST FOR CONTINUED NEGOTIATED RATE AUTHORITY AND
APPROVAL OF OPEN SOLICITATION PROCESSES**

Pursuant to section 205 of the Federal Power Act (“FPA”)¹ and Part 35 of the Federal Energy Regulatory Commission’s (“Commission”) regulations,² Ameren Transmission Company (“ATX”), Lucky Corridor, LLC (“Lucky Corridor” or the “Company”), and Mora Line, LLC (“Mora Line,” and together with ATX and Lucky Corridor, “Applicants”) hereby submit this filing requesting a Commission order making three related findings. First, Applicants request Commission confirmation that Lucky Corridor and Mora Line will each maintain their previously-granted negotiated rate authority following a pending transaction whereby ATX will become the upstream owner of Lucky Corridor and Mora Line.³ Second, in light of the pending transaction, Applicants also request Commission post-selection approval of the Lucky Corridor and Mora Line open solicitation reports submitted herein to ensure Applicants can honor the anchor customer agreements entered into to date.⁴ Finally, Applicants request express Commission approval of the capacity allocation process proposed herein that Applicants intend

¹ 16 U.S.C. § 824d.

² 18 C.F.R. Part 35 (2019).

³ Because neither Lucky Corridor nor Mora Line have rates on file with the Commission or energized facilities subject to the Commission’s jurisdiction, the proposed transaction does not require Commission authorization under section 203 of the FPA.

⁴ See *Lucky Corridor, LLC, et al.*, 151 FERC ¶ 61,072, at P 37 (2015) (conditioning approval of Lucky Corridor’s and Mora Line’s requests to presubscribe up to 100 percent of the capacity on the Lucky Corridor project and Mora Line project on the later submission of a formal report to the Commission on the capacity allocation process) (“*2015 Negotiated Rate Order*”).

to follow under ATX ownership for any remaining unsubscribed transmission capacity on the Lucky Corridor merchant transmission project, subject to one or more post-allocation compliance filings.⁵

Applicants respectfully request that the Commission issue an order as expeditiously as possible, but by no later than August 2, 2020. Commission approval of the requests submitted herein will ensure the continued development of these important merchant transmission projects, which are anticipated to provide significant reliability and economic benefits to the Southwest region.

I. BACKGROUND

A. Description of Applicants

1. Lucky Corridor and Mora Line

Lucky Corridor is a Colorado limited liability company, formed to develop, acquire, construct, and operate electricity transmission infrastructure in northern New Mexico. Lucky Corridor is an independent transmission company, as defined in section 35.15(b)(1) of the Commission's regulations,⁶ that does not own or control any electric transmission, distribution, or generation facilities, or any natural gas or oil pipeline facilities, and is not affiliated with any entity that does.⁷ Lucky Corridor has a single, wholly owned subsidiary and affiliate, Mora Line,

⁵ In addition to seeking approval of its capacity allocation approach after the post-selection process, the Commission also permits a developer to first seek approval of its capacity allocation approach prior to engaging in the open solicitation process, and then demonstrate in a compliance filing that the developer's selection of customers was consistent with the Commission-approved approach. *Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based Participant-Funded Transmission Projects; Priority Rights to New Participant-Funded Transmission*, 142 FERC ¶ 61,038, at P 31 (2013) ("2013 Policy Statement"); *see also, e.g., Grain Belt Express Clean Line LLC*, 147 FERC ¶ 61,098, at P 23 (2014) (approving Grain Belt Express' capacity allocation process, subject to a subsequent compliance filing demonstrating it followed the Commission-approved process) ("*Grain Belt*").

⁶ 18 C.F.R. § 35.35(b)(1).

⁷ In the Lucky Corridor and Mora Line 2015 application for negotiated rate authority, Lucky Corridor reported that approximately 9% of its ownership interests were held by individuals who also own an interest in Gallegos Wind Farm, LLC ("Gallegos Wind Farm"). *See* Application of Lucky Corridor, LLC and Mora Line, LLC

LLC, organized in July 2013 under the laws of the State of Colorado. Lucky Corridor is in the process of developing two separate merchant transmission projects: the Lucky Corridor Project and the Mora Line Project.⁸

a) Lucky Corridor Project

As described in Lucky Corridor's initial negotiated rate application filed in 2012,⁹ the Lucky Corridor Project was originally conceived of as a 93-mile upgrade of Tri-State Generation and Transmission Association, Inc.'s ("Tri-State") existing Gladstone to Taos 115-kV transmission line to a double-circuit 230-kV transmission line.¹⁰ The upgrade was expected to add 850 megawatts ("MW") of capacity to the existing 250 MW on the Tri-State line.¹¹

In its 2015 amended negotiated rate application,¹² Lucky Corridor explained that, while it had continued engineering work on the double-circuit 230-kV line as initially proposed, it appeared more likely than not that the Lucky Corridor Project would ultimately be changed to a 345-kV single-circuit configuration.¹³ Like the 230-kV configuration, the 345-kV line would provide 850 MW of transmission capacity.¹⁴ The route would also be 130 miles (as compared

for Authority to Sell Transmission Rights and Service at Negotiated Rates for the Mora Line, at n. 3, Docket No. ER15-842-000 (filed Jan. 12, 2015) ("Mora Line Application"). Gallegos Wind Farm is under new upstream ownership. As a result, ownership in Lucky Corridor is no longer held by any individuals also owning an interest in Gallegos Wind Farm.

⁸ To the extent Applicants engage in the development of future merchant transmission facilities, Applicants will file a request for negotiated rate authority with the Commission prior to engaging in any open solicitation process with respect to such future projects.

⁹ Application of Lucky Corridor, LLC for Authorization to Sell Transmission Rights and Service at Negotiated Rates, Docket No. ER12-1832-000 (filed May 22, 2012) ("Lucky Corridor Initial Application").

¹⁰ *Id.* at 3.

¹¹ *Id.*; *see also id.* at Padilla Testimony at 3-4.

¹² Application of Lucky Corridor, LLC for Revision of Existing Authority to Presubscribe Capacity at Market Based Rates to Allow Allocation of Up To 100% of Transmission Capacity to Anchor Customers, Subject to the Reporting and Other Requirements of the Final Policy Statement, Docket No. ER15-839-000 (filed Jan. 9, 2015) ("Lucky Corridor Amended Application").

¹³ *Id.* at 2-3.

¹⁴ *Id.* at 3.

with 93 miles for the 230-kV configuration) and would directly connect to Public Service Company of New Mexico's ("PNM") Ojo substation.¹⁵ Lucky Corridor explained that the final decision between the two project configurations would depend on several regulatory and market factors.

As currently planned, the Lucky Corridor Project will be a 62-mile stand-alone 345-kV transmission line interconnecting with Tri-State's Springer and Taos substations with potential delivery to PNM's Ojo substation, via existing transmission. Consistent with Lucky Corridor's original proposal, the Lucky Corridor Project will terminate at Tri-State's Taos substation.

b) Mora Line Project

The Mora Line Project, which does not traverse federal lands, was initially proposed as a 102-mile, 115-kV transmission line with 180 MW of capacity.¹⁶ The line was planned to interconnect at Tri-State's existing Gladstone and Storrie Lake substations for transmission to PNM's Ojo substation and ultimately to the PNM transmission system at Four Corners.¹⁷ As currently studied and planned, the Mora Line Project will continue to be configured as a transmission line with 180 MW of capacity. However, the Mora Line Project will now be connecting to PNM's Arriba substation.¹⁸

2. Ameren Transmission Company

ATX is a wholly owned subsidiary of Ameren Corporation and an intermediate holding company that would acquire Lucky Corridor and Mora Line. ATX is not a public utility.

¹⁵ *Id.*

¹⁶ More Line Application at 5.

¹⁷ *Id.*

¹⁸ *See* Public Service Company of New Mexico, Docket No. ER18-885-000 (March 17, 2018) (delegated letter order accepting for filing an executed Transmission Construction and Interconnection Agreement between PNM and Lucky Corridor).

Through Ameren Corporation, a public utility holding company under the Public Utility Holding Company Act of 2005,¹⁹ ATX is affiliated with Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”), and Ameren Illinois Company d/b/a Ameren Illinois (“Ameren Illinois”), Ameren Transmission Company of Illinois (“ATXI”) and ATX Southwest, public utility subsidiaries of Ameren Corporation.²⁰

Pursuant to a pending transaction between ATX and Lucky Corridor, ATX intends to acquire all of the ownership interests in Lucky Corridor, and its affiliate Mora Line. As demonstrated herein and in Attachment A hereto,²¹ neither ATX nor any of its affiliates own generation, distribution, or transmission facilities in the same balancing authority area (“BAA”) as the Lucky Corridor or Mora Line Projects.

¹⁹ 16 U.S.C. § 719a, *et seq.*

²⁰ Ameren Missouri is a public utility that serves wholesale and retail customers located in Missouri. Ameren Missouri has participated as a transmission-owning member of the Midcontinent Independent System Operator, Inc. (“MISO”) since May 1, 2004. Prior to that date, Ameren Missouri provided transmission service under an open access transmission tariff with its affiliate Central Illinois Public Service Company d/b/a AmerenCIPS. Most of Ameren Missouri’s wholesale customers and all of Ameren Missouri’s retail customers are located within the MISO footprint. Ameren Illinois is an electric and gas utility and has its headquarters in Collinsville, Illinois. Ameren Illinois serves 1.2 million electric and 816,000 natural gas customers in more than 1,200 communities within a 43,700 square-mile territory in Illinois. Ameren Illinois is a public utility that serves wholesale and retail customers located in Illinois and is a transmission-owning member of MISO. ATXI has developed or is in the process of developing several MISO-approved multi-value transmission projects, including (i) the Illinois Rivers Transmission Project, a 375 mile transmission project spanning the Mississippi River and central Illinois, expected to be completed in 2020; (ii) the Spoon River Transmission Project located in northwest Illinois, which spans approximately 46 miles between Galeburg and Peoria, Illinois; and (iii) the Mark Twain Transmission Project, which spans 96 miles in northeast Missouri and was completed in 2019. ATX Southwest is a special purpose entity formed solely for the purpose of engineering, designing, permitting, constructing, and owning transmission projects within the Southwest Power Pool, Inc. (“SPP”) footprint, and will subsequently become a Transmission Owner under the SPP Membership Agreement and the SPP Tariff, pursuant to which it will transfer operational control of any transmission projects built to SPP. ATX Southwest has a formula rate on file with the Commission but currently owns no transmission projects.

²¹ Attachment A provides a list of ATX’s affiliates.

B. History of Negotiated Rate Authority

1. Lucky Corridor

On May 22, 2012, as supplemented on June 28, 2012, Lucky Corridor submitted in Docket No. ER12-1832 an application for authority to sell transmission rights and services at negotiated rates over the Lucky Corridor Project, a proposed merchant transmission facility.²² At that time, Lucky Corridor requested authorization to allocate up to 70 percent of the Lucky Corridor Project's capacity to anchor customers through an anchor customer pre-subscription process. Lucky Corridor stated that the Lucky Corridor Project will facilitate the transmission of approximately 850 MW of generation.²³ Lucky Corridor also explained that the Lucky Corridor Project will enhance reliability and reduce congestion while facilitating the delivery of power from more economical remote resources to be located in the northern and eastern areas of New Mexico.²⁴ In its application, Lucky Corridor demonstrated how its proposal satisfied the Commission's four-factor methodology for granting requests for negotiated rate authority, as set forth in *Chinook*.²⁵

On October 1, 2012, the Commission issued an order granting Lucky Corridor's initial application subject to Lucky Corridor filing a report with FERC "describing the terms of the anchor tenant agreements and the results of any open season within 30 days after the end of the open season."²⁶

²² See *supra* note 9.

²³ *Id.* at 6.

²⁴ *Id.* at 6-7.

²⁵ *Id.* at 8-13. *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134, *order on reh'g*, 128 FERC ¶ 61,074 (2009) ("*Chinook*"). These factors are: (1) the justness and reasonableness of rate; (2) the potential for undue discrimination; (3) the potential for undue preference, including affiliate preference; and (4) regional reliability and operational efficiency requirements. *Id.* at P 37.

²⁶ *Lucky Corridor, LLC*, 141 FERC ¶ 61,002 at ordering para. B (2012) ("*2012 Negotiated Rate Order*").

On January 9, 2015, as amended on January 14, 2015, Lucky Corridor submitted a request in Docket No. ER15-839-000 to revise its existing authority to sell transmission capacity on the Lucky Corridor Project at negotiated rates.²⁷ Specifically, Lucky Corridor sought authority to presubscribe up to 100 percent of the Lucky Corridor Project’s transmission capacity to one or more anchor customers in lieu of an open season, consistent with the Commission’s 2013 Policy Statement on merchant transmission capacity allocation.²⁸ In its application, Lucky Corridor explained that, while it had tentatively arranged for the presubscription of up to 59 percent of the Lucky Corridor Project’s capacity to a single anchor customer, Gallegos Wind Farm, no other capacity had been allocated through its solicitation efforts.²⁹ Thus, Lucky Corridor explained that the additional flexibility to presubscribe up to 100 percent of the Project’s capacity “will make the actual construction of the Lucky Corridor Project more likely.”³⁰

On April 27, 2015, the Commission issued an order conditionally accepting Lucky Corridor’s request to amend its previously granted authorization, subject to the submission of a “formal report[] to the Commission on the capacity allocation process for [the] project that address[es] the seven criteria specified in the [2013] Policy Statement”³¹

2. Mora Line

On January 12, 2015, as amended January 14, 2015, Lucky Corridor and its subsidiary, Mora Line, submitted an application requesting authorization to charge negotiated rates for the

²⁷ Lucky Corridor Amended Application, *see supra* note 12.

²⁸ 2013 Policy Statement, *see supra* note 5.

²⁹ Lucky Corridor Amended Application at 11.

³⁰ *Id.* at 11-12.

³¹ 2015 *Negotiated Rate Order* at P 37.

sale of transmission rights over a new merchant transmission line, the Mora Line Project, including the authority to presubscribe 100 percent of the Mora Line Project's capacity through its anchor selection process.³² In the application, Lucky Corridor and Mora Line demonstrated how the Mora Line Project cost allocation proposal satisfied the Commission's four-factor methodology for granting requests for negotiated rate authority. Lucky Corridor and Mora Line explained that, following considerable advertising by the Company, the full capacity for the Mora Line Project was presubscribed to a single anchor customer, Gallegos Wind Farm, via an anchor customer option agreement.³³ Lucky Corridor and Mora Line further explained that "in the event capacity becomes available on the Mora Line for presubscription, the Company will offer it openly, to any comers and any rate differentials between new customers and the anchor customer will be objectively justifiable."³⁴ Moreover, applicants noted that "no service has been or will be sold under the nonbinding option agreement for Mora Line [Project] capacity unless the Commission grants the requested authority," and committed to file a full report on its capacity allocation process, as required by the 2013 Policy Statement.³⁵ Finally, applicants noted that in the "event an RTO or ISO is formed that electrically includes or borders on the Mora Line," it will "turn over control of the Mora Line to that organization, and if applicable, that organization's [open access transmission tariff ("OATT")]."³⁶

In the same *2015 Negotiated Rate Order* addressing Lucky Corridor's request to amend its negotiated rate authority, the Commission conditionally accepted Lucky Corridor and Mora

³² Mora Line Application, *see supra* note 7.

³³ *Id.* at 10.

³⁴ *Id.* at 18.

³⁵ *Id.* at 10-11.

³⁶ *Id.* at 18-19.

Line's request to charge negotiated rates for the Mora Line Project, including the authority to presubscribe up to 100 percent of the project to one or more anchor customers.³⁷ The Commission again conditioned its approval of Lucky Corridor's and Mora Line's request with respect to the Mora Line Project on the submission of a formal post-selection report demonstrating compliance with the Commission's 2013 Policy Statement requirements.³⁸

3. Executed Anchor Customer Option Agreements

To date, 500 MW of the Lucky Corridor Project's 850 MW of capacity and the full capacity of the Mora Line Project has been presubscribed through three anchor customer option agreements with a single anchor customer—Gallegos Wind Farm:

	<u>Anchor Customer</u>	<u>Merchant Project</u>	<u>Presubscribed Capacity</u>	<u>Date of Execution</u>
1.	Gallegos Wind Farm	Lucky Corridor	300 MW	June 4, 2013
2.	Gallegos Wind Farm	Lucky Corridor	200 MW	June 26, 2014
3.	Gallegos Wind Farm	Mora Line	180 MW	June 26, 2014

Copies of the anchor customer option agreements are attached hereto as confidential Attachment B.

No associated transmission service agreements have been executed between the parties to the respective anchor customer option agreements because the Projects remain in the early phases of development and neither Lucky Corridor or Mora Line has yet filed an OATT.³⁹ However, Lucky Corridor and Mora Line are bound by the terms of their respective anchor

³⁷ 2015 Negotiated Rate Order at P 37 and ordering para. (D).

³⁸ *Id.* at P 37.

³⁹ Pursuant to the terms of the anchor customer option agreements, [BEGIN CUI//PRIV] [REDACTED]
[REDACTED]
[REDACTED] [END CUI//PRIV].

customer option agreements to enter into firm transmission service agreements in accordance with the terms of the anchor customer option agreements except for in certain narrow instances. As a result, absent those specific circumstances, Lucky Corridor and Mora Line are obligated to provide the specified quantity of firm transmission service to Gallegos Wind Farm upon commercial operation of the Projects, and subject to the Commission's approval of Lucky Corridor and Mora Line open solicitation process set forth herein.

C. Benefits of the Lucky Corridor and Mora Line Projects

As previously explained in the Lucky Corridor Initial Application and the Mora Line Application, the Projects are expected to provide substantial benefits to the New Mexico region. Northeastern New Mexico has unique characteristics well-suited for the development of renewable energy resources. The Projects will facilitate the delivery of new economic resources to the Four Corners market hub, and to other Western markets, while enhancing system reliability and reducing congestion.⁴⁰ The Projects are also anticipated to provide substantial economic benefits in the economically distressed northern New Mexico region.⁴¹ For example, the Projects are expected to create an immediate economic stimulus, increase employment, and contribute significant additional tax base in the Project areas.⁴²

II. REQUEST FOR CONTINUED NEGOTIATED RATE AUTHORITY UNDER ATX OWNERSHIP

Applicants first ask the Commission to confirm that Lucky Corridor and Mora Line will each maintain their negotiated rate authority under ATX ownership. Applicants submit that the change in upstream ownership that would result from ATX's pending acquisition of Lucky

⁴⁰ See Lucky Corridor Initial Application at 6; Mora Line Application at 8-9.

⁴¹ See Lucky Corridor Initial Application at 6-7; Mora Line Application at 8.

⁴² See Mora Line Application at 8.

Corridor, and its wholly-owned subsidiary Mora Line, does not have a material impact on the factors upon which the Commission relied in granting and affirming Lucky Corridor's and Mora Line's negotiated rate authority in the *2012 Negotiated Rate Order* and *2015 Negotiated Rate Order*, respectively. Nonetheless, out of an abundance of caution, Applicants make the following presentation in support of their request that the Commission authorize Lucky Corridor and Mora Line to sell transmission capacity on the Lucky Corridor Project and Mora Line Project at negotiated rates under ATX ownership.

In the *2012 Negotiated Rate Order* and *2015 Negotiated Rate Order*, the Commission applied the four *Chinook* factors to evaluate Lucky Corridor's and Mora Line's applications for negotiated rate authority.⁴³ The Commission has explained that this four-factor methodology simultaneously acknowledges the financing realities faced by merchant transmission developers, the consumer protection mandates of the FPA, and the Commission's open access requirements.⁴⁴ Moreover, this approach allows the Commission to use a consistent framework to evaluate requests for negotiated rate authority from a wide range of merchant projects that can differ substantially from one project to the next. In particular, the Commission's analysis focuses on: (1) the justness and reasonableness of rates; (2) the potential for undue discrimination; (3) the potential for undue preference, including affiliate preference; and (4) regional reliability and operational efficiency requirements.⁴⁵ As demonstrated herein, Lucky Corridor and Mora Line continue to satisfy the Commission's four-factor test and to qualify for negotiated rate authority under ATX ownership.

⁴³ *2012 Negotiated Rate Order* at PP 9-22; *2015 Negotiated Rate Order* at PP 16, 19-45.

⁴⁴ *2012 Negotiated Rate Order* at P 9; *see also 2015 Negotiated Rate Order* at P 16.

⁴⁵ *See, e.g., 2012 Negotiated Rate Order* at P 9.

A. Factor One: Lucky Corridor and Mora Line Negotiated Rates Will Be Just and Reasonable

Before it will approve negotiated rates for a merchant transmission project, the Commission must find that the proposed rates are just and reasonable.⁴⁶ To do so, the Commission “must determine that the merchant transmission owner has assumed the full market risk for the cost of constructing the proposed transmission project.”⁴⁷ The Commission will also consider, among other things, whether there are captive customers that would be required to pay the costs of the project, whether the merchant transmission owner of an affiliate owns transmission facilities in the particular region where the project is to be located, and whether the merchant transmission owner is capable of erecting any barriers to entry among competitors.⁴⁸

In the *2012 Negotiated Rate Order* and *2015 Negotiated Rate Order*, the Commission found that Lucky Corridor and Mora Line assume the full market risk associated with the Lucky Corridor Project and Mora Line Project and do not have captive customers.⁴⁹ Additionally, the Commission found that because neither Lucky Corridor nor Mora Line own any transmission facilities within the region (other than the proposed Projects), Lucky Corridor and Mora Line are not able to erect barriers to entry or exercise market power in the relevant market.⁵⁰ Thus, the Commission determined that Lucky Corridor and Mora Line satisfy the first factor of the four-factor test.

ATX’s upstream ownership of Lucky Corridor and Mora Line will not change any of these findings. Lucky Corridor and Mora Line will operate the respective Projects on a merchant

⁴⁶ 2013 Policy Statement at P 19.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *2012 Negotiated Rate Order* at P 13; *2015 Negotiated Rate Order* at P 22.

⁵⁰ *Id.*

transmission basis and will bear all risk for the Projects. Lucky Corridor and Mora Line do not have any captive customers, and will only recover Project costs from those customers who are awarded transmission capacity from the anchor customer and open season capacity allocation processes. Lucky Corridor and Mora Line do not have a traditionally regulated transmission system, and neither ATX nor any of its affiliates own generation, transmission, or distribution in the Western interconnection where the Projects will be located. Thus, neither Lucky Corridor nor Mora Line can erect barriers to entry or exercise market power in the relevant market. Therefore, Lucky Corridor and Mora Line continue to meet the requirements of the first factor, even after the ATX transaction.

B. Factor Two: There is No Potential for Undue Discrimination

In order to prevent undue discrimination when granting negotiated rate authority to merchant transmission developers, the Commission primarily looks at two things: (1) the terms and conditions of a merchant developer's open season; and (2) the developer's open access transmission tariff commitments (or in the RTO/ISO context, its commitment to turn operational control over to the RTO or ISO).⁵¹ As an alternative to holding an open season, the Commission's 2013 Policy Statement permits merchant transmission developers to demonstrate no undue discrimination or preference by conducting an open solicitation process that complies with certain requirements.⁵² Specifically, the developer must: (1) broadly solicit interest in the project from potential customers; and (2) after the solicitation process, demonstrate to the Commission that it has satisfied the seven minimum solicitation, selection, and negotiation process criteria set forth in the 2013 Policy Statement.⁵³

⁵¹ *Chinook*, 126 FERC ¶ 61,134 at P 40.

⁵² 2013 Policy Statement at PP 16-18, 23.

⁵³ *Id.* at PP 29-30.

In the *2012 Negotiated Rate Order* and *2015 Negotiated Rate Order*, the Commission determined that both Lucky Corridor and Mora Line satisfied the Commission's open solicitation requirement that merchant transmission developers issue broad notice of the project to all potential customers, subject to their later submission of a post-allocation report demonstrating compliance with the Commission's 2013 Policy Statement Requirements.⁵⁴ As discussed in Part III below, as part of this application Applicants seek approval of the post-selection open solicitation compliance reports for the Lucky Corridor and Mora Line Projects with respect to the anchor customer option agreements entered into for the Projects to date.

With respect to any future sales of existing transmission capacity on the Projects, consistent with their commitments in the *2015 Negotiated Rate Order*, Lucky Corridor and Mora Line continue to commit to use a transparent open solicitation process consistent with the 2013 Policy Statement for future sale of existing capacity on the Projects. As noted above, Lucky Corridor has not allocated the entire capacity of the Lucky Corridor Project to anchor customers and anticipates engaging in an additional open solicitation process for the remaining capacity under ATX ownership. As discussed in Part IV below, Applicants request express Commission approval of that process, as detailed herein. Lucky Corridor also commits to submit a subsequent post-open solicitation report demonstrating compliance with the Commission-approved process following the completion of its customer selection process for the remaining 350 MW of capacity on the Lucky Corridor Project.

Finally, both Lucky Corridor and Mora Line continue their commitment to file an OATT for the Lucky Corridor Project and Mora Line Project, consistent with or superior to the

⁵⁴ *2012 Negotiated Rate Order* at P 22; *2015 Negotiated Rate Order* at P 36.

Commission's *pro forma* OATT, or to explain how the *pro forma* provisions are not applicable given Lucky Corridor's business model.⁵⁵

C. Factor Three: There Are No Concerns of Undue Preference and Affiliate Abuse

In order to ensure that service on merchant transmission projects will not result in any undue preference to any particular entity, the Commission examines situations where the merchant transmission developer is affiliated with either an anchor customer, the open season or solicitation participants, and/or customers that subsequently take service on the merchant line.⁵⁶ The Commission requires an affirmative showing that any such affiliate is not afforded undue preference, and the developer bears a high burden to demonstrate that the assignment of capacity to its affiliate and the corresponding treatment of nonaffiliate potential customers is just, reasonable, and not unduly discriminatory or preferential.⁵⁷

Neither Lucky Corridor nor Mora Line are affiliated with Gallegos Wind Farm—the sole anchor customer of the Projects. As explained above, while Lucky Corridor disclosed in prior applications that approximately nine percent of its ownership interests were held by individuals who also owned an interest in Gallegos Wind Farm, that affiliation no longer exists. Moreover, Gallegos Wind Farm is not affiliated with ATX. In addition, none of ATX's affiliates are located or currently do business in the Western Interconnection where the Lucky Corridor Project and Mora Line Project are located. Nor have any of ATX's affiliates participated in the Lucky Corridor or Mora Line solicitation processes. Applicants do not anticipate any such affiliates to participate in any future open capacity allocation process at this time. Lucky

⁵⁵ 2013 Policy Statement at P 28. *See also, Montana Alberta Tie, Ltd.*, 116 FERC ¶ 61,071 at P 60 (2006).

⁵⁶ *Tres Amigas LLC*, 130 FERC ¶ 61,207, at P 91 (2010).

⁵⁷ 2013 Policy Statement at P 34.

Corridor and Mora Line continue to commit to provide prompt notice to the Commission if circumstances change.

Furthermore, Lucky Corridor and Mora Line reaffirm their commitment to comply with all applicable reporting requirements regarding affiliate abuse. Consistent with Commission precedent, if any affiliate of Applicants is allocated any of the remaining capacity on the Lucky Corridor Project during the proposed open solicitation process, Applicants will demonstrate in a post-allocation compliance filing that the assignment of capacity to the affiliate and the corresponding treatment of unaffiliated potential customers is just, reasonable, and not unduly discriminatory or preferential. Moreover, to the extent that an affiliate takes transmission service on the Projects, Applicants will maintain separate books and records in accordance with the Commission's regulations and will comply with all applicable affiliate rules and with the Commission's Standards of Conduct.⁵⁸

D. Factor Four: The Projects Will Enhance Regional Reliability and Operational Efficiency

The Commission requires merchant transmission developers to comport with all applicable requirements of the North American Electric Reliability Corporation ("NERC") and any regional reliability council in which they are located, and are encouraged to participate in regional planning processes required by Order No. 890 as their projects become operational.

Under ATX ownership, Lucky Corridor and Mora Line will continue to comply with all applicable reliability requirements and procedures of NERC and regional entity/regional reliability council requirements, and will participate in planning processes that Order Nos. 890 and 1000 may require.

⁵⁸ 2015 *Negotiated Rate Order* at PP 41-42; *see also Grain Belt*, 147 FERC ¶ 61,098, at P 29; *S. Cross Transmission LLC*, 157 FERC ¶ 61,090, at P 30 (2016); *Linden VFT, LLC*, 162 FERC ¶ 61,297, at P 31 (2018).

E. Request for Continued Waiver

In the *2012 Negotiated Rate Order* and *2015 Negotiated Rate Order*, Lucky Corridor and Mora Line requested, and the Commission granted, certain waivers of the Commission's cost-based data filing requirements.⁵⁹ Applicants respectfully request continuation of such previously granted waivers following the ATX transaction. Because Lucky Corridor and Mora Line will charge negotiated rates, the Commission found that Part 35 of the regulations requiring the filing of cost-based data are not applicable. Applicants submit that consistent with the Commission's prior findings, Lucky Corridor's and Mora Line's waiver of Section 35.13(a) of the Commission's regulations and the filing requirements of Subparts 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, should continue.⁶⁰ Applicants also request continued waiver of Part 141's FERC Form No. 1 filing requirement for Lucky Corridor and Mora Line.⁶¹ Finally, to the extent necessary, Applicants request waiver of any other part of the Commission's regulations that has not been completely satisfied by this filing.

III. REQUEST FOR APPROVAL OF OPEN SOLICITATION PROCESS EMPLOYED TO DATE FOR THE LUCKY CORRIDOR AND MORA LINE PROJECTS

Applicants request Commission approval of the open solicitation process that resulted in the presubscription of transmission capacity on the Lucky Corridor and Mora Line Projects through the option agreements with Gallegos Wind Farm. Through Lucky Corridor's and Mora

⁵⁹ *2012 Negotiated Rate Order* at PP 33-35; *2015 Negotiated Rate Order* at PP 46-48.

⁶⁰ *See Hudson Transmission*, 135 FERC ¶ 61,104 at P 42; *Tres Amigas LLC*, 130 FERC ¶ 61,207 at P 103; *Wyoming Colorado Intertie, LLC*, 127 FERC ¶ 61,125, at P 62 (2009) ("Wyoming"); *Linden VFT, LLC*, 119 FERC ¶ 61,066, at P 42 (2007) ("Linden").

⁶¹ *2012 Negotiated Rate Order* at P 35; *2015 Negotiated Rate Order* at P 48; *see also Wyoming*, 127 FERC ¶ 61,125 at P 65; *Linden*, 119 FERC ¶ 61,066 at P 44.

Line's open solicitation process, (i) 500 MW of the Lucky Corridor Project's available 850 MW has been presubscribed to Gallegos Wind Farm, and (ii) the full capacity of the Mora Line Project has been presubscribed to Gallegos Wind Farm. The Commission recognized in its *2015 Negotiated Rate Order* that merchant transmission developers have discretion as to the timing of requests for approval of its capacity allocation process.⁶² As noted by the Commission in its order, Lucky Corridor and Mora Line elected to "seek approval of their capacity allocation approach for the Lucky Corridor Project and Mora Line Project following the completion of their customer selection process, consistent with the [2013] Policy Statement."⁶³

In light of ATX's pending acquisition of the Company owning the Lucky Corridor Project and the Mora Line Project, Applicants submit as part of this application a report on the post-open solicitation process following the completion of Lucky Corridor's and Mora Line's initial anchor customer selection in satisfaction of their obligations under the *2012 Negotiated Rate Order* and *2015 Negotiated Rate Order*. Applicants respectfully request that the Commission issue an order approving the capacity allocation approach reported herein. Doing so will provide clarity with respect to Lucky Corridor's and Mora Line's obligation to honor their commitments under the existing anchor customer option agreements as well as ensure that Applicants can rely on the commitments by the anchor customers under those same agreements. As demonstrated below, the executed anchor customer option agreements are the product of a broadly-noticed, transparent, and non-discriminatory open solicitation process that complies with the Commission's requirements set forth in its 2013 Policy Statement.

⁶² *2015 Negotiated Rate Order* at P 35.

⁶³ *Id.*

The Commission has previously recognized the need to “foster the development of [merchant transmission] projects,”⁶⁴ and acknowledged “the financing realities faced by merchant transmission developers.”⁶⁵ Approval of the open solicitation process for the Lucky Corridor and Mora Line Projects, as requested herein, will facilitate the closing of the transaction between ATX and Lucky Corridor, and significantly increase the likelihood of the Projects being funded and therefore reaching commercial operation. As described above, the Projects are anticipated to provide significant benefits to the region, including improved reliability and decreased congestion, facilitating the delivery of power to northeastern and central New Mexico, from more economical, but remote resources, and providing substantial economic employment and other benefits to the New Mexico region.

A. Legal Standard

In the 2013 Policy Statement, the Commission explained that the post-open solicitation compliance filing is necessary “to provide transparency, and to prevent against undue discrimination and undue preference” by those merchant transmission entities with negotiated rate authority.⁶⁶ Specifically, the Commission provided that merchant transmission entities must include the following information in their post-open solicitation compliance filings:

- (1) Steps the developer took to provide broad notice, including the project information and customer evaluation criteria that were related in the broad notice;
- (2) Identity of the parties that expressed interest in the project, placed bids for project capacity, and/or purchased capacity; and the capacity amount, terms, and prices involved in that interest, bid, or purchase;
- (3) Basis for the developer’s decision to prorate, or not to prorate, capacity, if a proposed project is oversubscribed;

⁶⁴ *Id.* at P 16.

⁶⁵ *Id.*

⁶⁶ 2013 Policy Statement at P 30.

- (4) Basis for the developer's decision not to increase capacity for a proposed project if it is oversubscribed (including the details of the economic, technical, or financial infeasibility that is the basis for declining to increase capacity);
- (5) Justification for offering more favorable rates, terms, and conditions to certain customers, such as "first movers" or those willing to take on greater project risk-sharing;
- (6) Criteria used for distinguishing customers and the method used for evaluating bids. This should include the details of how each potential transmission customer (including both those who were and those who were not allocated capacity) was evaluated and compared to other potential transmission customers, both at the early stage when the developer chooses with whom to enter into bilateral negotiations and subsequently when the developer chooses in the negotiation phase to whom to award transmission capacity; and
- (7) Explanation of decisions used to select and reject specific customers. In particular, the report should identify the facts, including any rates, terms or conditions of agreements unique to individual customers that led to their selection, and relevant information about others that led to their rejection. If a selected customer is an affiliate, the Commission will look more carefully at the basis for reaching this determination.⁶⁷

The Commission has also provided flexibility with respect to the timing of post-open solicitation compliance filings, explaining that it "will allow a developer discretion in timing its request that the Commission approve the capacity allocation process."⁶⁸

Applicants address, and demonstrate compliance with, each of the above elements herein for the open solicitation process conducted for the Lucky Corridor Project and Mora Line Project. As a result, Applicants respectfully request the Commission approve the post-selection report filing for the Lucky Corridor Project and Mora Line Project.

⁶⁷ *Id.* The Commission has previously acknowledged that some of these criteria may not apply to Applicants' capacity allocation processes in the event only one party has expressed interest in capacity on the Projects. Nevertheless, the Commission has been clear that even in such instances it still "expect[s] Applicants to address all applicable criteria in their formal reports and include any additional information that may provide additional transparency to the Commission and interested parties." *2015 Negotiated Rate Order* at P 37.

⁶⁸ 2013 Policy Statement at P 31. For example, the Commission notes that developers may seek approval of their capacity allocation process after having completed the process of selecting customers or may first seek approval of its capacity allocation approach, and then demonstrate in a compliance filing to the Commission order approving that approach that the developer's selection of customers was consistent with the approved selection process.

B. Open Solicitation and Selection Process

1. Broad Notice

Lucky Corridor provided broad notice regarding its open solicitation of available capacity on the Lucky Corridor and Mora Line Projects in an effort to draw as much interest from potential bidders as possible. As explained by the Commission, a project developer “must issue broad notice of the project in a manner that ensures that all potential and interested customers are informed of the proposed project[.]”⁶⁹ This may include “placing notice in trade magazine or regional energy publications.”⁷⁰ In addition, the Commission has specified that a notice should include:

developer points of contact, pertinent project dates, and sufficient technical specifications and contract information to inform interested customers in the nature of the project, including: (1) project size/capacity, (2) end points of the line, (3) projected construction and/or in-service dates, (4) type of line, (5) precedent agreement (if developed), and (6) other capacity allocation arrangements (including how the developer will address potential oversubscription of capacity).⁷¹

Finally, the Commission has explained that it “expects the developer to update its notice if there are any material changes to the nature of the project or the status of the capacity allocation process, in particular to ensure that interested entities are informed of any remaining available capacity.”⁷² The broad notice provided by Lucky Corridor regarding the open solicitation process for the Projects fully complies with the Commission’s notice requirements.

As explained in the Affidavit of Lynn Chapman Greene, the Lucky Corridor CEO, attached hereto, Lucky Corridor placed notice of its open solicitation process in a number of

⁶⁹ *Lake Erie CleanPower Connector*, 144 FERC ¶ 61,203, at P 15 (2013) (citing 2013 Policy Statement at P 23).

⁷⁰ *Id.*

⁷¹ *Id.* (citing 2013 Policy Statement at P 20).

⁷² *Id.* (citing 2013 Policy Statement at PP 24-27).

different regional publications specifically aimed at reaching a wide range of potential interested customers. Following an announcement by the State of New Mexico Land Office that it would open up for bid the opportunity for interested parties to acquire the right to develop wind energy on certain State lands, Lucky Corridor engaged in a robust advertising campaign to alert potentially interested parties that it was engaged in an open solicitation process for transmission capacity on the proposed Lucky Corridor and Mora Line Projects.⁷³ In particular, in conjunction with advertisements run by the New Mexico Land Office regarding its anticipated public lands auction, Lucky Corridor ran an advertisement on the same page notifying the public of the availability of transmission capacity on the Projects.⁷⁴

Lucky Corridor also placed advertisements notifying potentially interested parties of its open solicitation process in The Albuquerque Journal in April and May 2015, and in the Union County Leader in April 2014.⁷⁵ Lucky Corridor also placed a recorded advertisement with Newsline For the Blind the week of April 30, 2014.⁷⁶

In addition to the advertisements placed, Lucky Corridor has maintained a posting on the homepage of its website notifying potential transmission customers of its open solicitation process.⁷⁷ In particular, the posting explained to interested parties that bids may be selected based on “credit rating, ‘first mover’ status, and customers’ willingness to share risks[.]”⁷⁸ The website posting also set forth (i) specific information about the proposed location and technical specifications of the Projects, including the proposed end points of the line, the type of line, and

⁷³ Attachment C, Affidavit of Lynn Chapman Greene at 5-7 (“Greene Affidavit”).

⁷⁴ *Id.* at 6.

⁷⁵ *Id.* at 7.

⁷⁶ *Id.*

⁷⁷ *Id.* at 5-6, 8.

⁷⁸ *See* Lucky Corridor website at luckycorridor.com.

the project size/capacity, (ii) developer contact information, should interested customers wish to receive a copy of a draft anchor customer agreement or request any additional information about the Projects, and (iii) an explanation that the line “may be upgraded, if there is sufficient interest.”⁷⁹ Further, the open solicitation posting was also revised periodically to provide notice to potential customers of any changes to the amount of available transmission capacity open for solicitation, the anticipated in-service date of the Projects, and the allocation of any transmission capacity to certain anchor customers.⁸⁰ As explained by Ms. Greene, information regarding the open solicitation and the existing available capacity on the Lucky Corridor Project was available on the Lucky Corridor website starting in 2013.⁸¹

Lucky Corridor and Mora Line also engaged in routine calls to potentially interested energy projects, and attended regional meetings and conferences related to generation and/or transmission development in the region.⁸²

Finally, Lucky Corridor's and Mora Line's outreach efforts were discussed in a variety of online trade publications, including the publication of a June 2018 interview with Lucky Corridor CEO Lynn Chapman Greene discussing the nature and ongoing development of the Lucky Corridor and Mora Line Projects.⁸³

Despite the extensive outreach efforts described above—*e.g.*, placing advertisements in local newspapers, online trade press publications, making presentations to Independent Power

⁷⁹ Greene Affidavit at 6.

⁸⁰ *Id.*

⁸¹ *Id.* at 8.

⁸² *Id.* at 5, 7.

⁸³ *Id.* at 7-8. The Lucky Corridor applications for negotiated rate authority filed with the Commission in 2012 and 2015, which were publicly noticed and subject to comment, also provided information regarding Lucky Corridor's ongoing open solicitation efforts with respect to the Projects.

Producers, participation in regional conferences, engaging in cold-calls to potential customers, and maintaining an updated description of the Projects and the ongoing open solicitation process on the Lucky Corridor website for over five years—in the years following the execution of the anchor customer option agreements with Gallegos Wind Farm in 2013 and 2014, no other entity has emerged that is willing to commit to the remaining available firm transmission capacity on the Lucky Corridor Project. Beginning in late 2019, Lucky Corridor has seen signs of increasing interest in the remaining capacity on the Lucky Corridor Project and has engaged in preliminary conversations with interested parties. However, any subsequent allocation of the remaining capacity on the Lucky Corridor Project will be subject to the prospective solicitation process described in Section IV.

2. Identity of Parties and Bids

As described above and in the Affidavit of Ms. Greene, all three anchor customer option agreements have been entered into with a single anchor customer, Gallegos Wind Farm.⁸⁴ Following Lucky Corridor's broad advertising campaign run in conjunction with the New Mexico Land Office's public lands auction in 2013, Gallegos Wind Farm was the only entity to express interest in available transmission capacity on the Lucky Corridor and Mora Line Projects. As a result, Lucky Corridor and Mora Line engaged Gallegos Wind Farm in negotiations which ultimately culminated in the execution of their respective anchor customer option agreements, attached hereto as confidential Attachment B.

⁸⁴ *Id.* at 8-9.

3. Basis for the Developer’s Decision to Prorate, or Not to Prorate, Capacity, if a Proposed Project is Oversubscribed

As noted above, following Lucky Corridor’s broad advertising campaign which began in 2013, Gallegos Wind Farm was the only entity to express interest in available firm transmission capacity on the Lucky Corridor and Mora Line Projects through the end of 2019.⁸⁵ Gallegos Wind Farm ultimately entered into three anchor customer options agreements with Lucky Corridor for a total of 500 MW of capacity on the Lucky Corridor Project and the full 180 MW of capacity on the Mora Line Project. Up to 350 MW of capacity remains available on the Lucky Corridor Project, and thus Lucky Corridor did not need to decide whether to prorate, or not prorate, capacity in response to bids for the Lucky Corridor Project. With respect to the Mora Line Project, which is designed at 180 MW, at the time the anchor customer option agreement with Gallegos Wind Farm was executed, Gallegos Wind Farm was the only entity to express any interest in available transmission capacity on the Mora Line Project. As a result, Lucky Corridor similarly did not need to decide whether to prorate, or not prorate, capacity for the Mora Line Project.

4. Basis for the Developer’s Decision Not to Increase Capacity for a Proposed Project if it is Oversubscribed

As explained above, the Lucky Corridor Project has up to 350 MW of available transmission capacity. Likewise, at the time Gallegos Wind Farm executed its anchor customer option agreement for the full capacity of the Mora Line Project, Gallegos Wind Farm was the sole entity to express interest in capacity on the Project. As a result, Lucky Corridor did not need

⁸⁵ As indicated in Part III.B.1 above, Lucky Corridor has seen signs of increasing interest in the remaining capacity on the Lucky Corridor Project beginning in late 2019—nearly five years after the execution of the anchor customer option agreements with Gallegos Wind Farm—and has engaged in preliminary conversations with interested parties. However, any subsequent allocation of the remaining capacity on the Lucky Corridor Project will be subject to the prospective solicitation process proposed by the Applicants herein.

to decide whether or not to increase the capacity of the Lucky Corridor Project or Mora Line Project as a result of the Projects being oversubscribed.⁸⁶

As explained in Section IV below, Applicants intend to engage in a second open solicitation process under ATX ownership for the remaining capacity on the Lucky Corridor Project. To the extent it is oversubscribed as a result of that process, ATX will address the competing demands through such process. Moreover, as noted above, both Lucky Corridor and Mora Line continue their commitment to file an OATT for the Lucky Corridor Project and Mora Line Project, consistent with or superior to the Commission's *pro forma* OATT, prior to the Projects going into service. Lucky Corridor and Mora Line will process requests for transmission service pursuant to the terms of the OATT, including expanding transmission capacity to meet requested demand consistent with the Commission's pricing policies.

5. Justification for Offering More Favorable Rates, Terms, and Conditions to Certain Customers

Gallegos Wind Farm is the sole anchor customer to presubscribe capacity on the Lucky Corridor or Mora Line Projects during the open solicitation process, and thus Lucky Corridor did not negotiate different rates, terms, or conditions between potential customers.⁸⁷ The full list of terms and conditions agreed to between Gallegos Wind Farm and Lucky Corridor can be found in the copy of the anchor customer option agreements attached hereto as confidential Attachment B.

⁸⁶ Greene Affidavit at 10.

⁸⁷ *Id.*

6. Criteria for Distinguishing Customers and Evaluating Bids

As explained above, Lucky Corridor and Mora Line did not receive multiple bids in excess of available capacity, and thus did not need to distinguish between multiple customer bids.

7. Explanation of Decisions Used to Select and Reject Specific Customers

The open solicitation process provided an opportunity for customers to seek up to 100 percent of the Lucky Corridor Project's and Mora Line Project's transmission capacity under long-term arrangements. Lucky Corridor and Mora Line provided significant flexibility with respect to the terms of varying durations and payment structures. Ultimately, as described above, only Gallegos Wind Farm had expressed interest in capacity on the Lucky Corridor and Mora Line Projects at the time the anchor customer option agreements were executed, despite Lucky Corridor's broad solicitation efforts. Moreover, transmission capacity remains available on the Lucky Corridor Project to date. Because Lucky Corridor did not receive multiple requests for available capacity on either the Lucky Corridor or Mora Line Projects, Lucky Corridor did not need to select or otherwise reject specific customers prior to entering into the three anchor customer option agreements with Gallegos Wind Farm.

IV. REQUEST FOR APPROVAL OF PRE-SELECTION PROCESS FOR THE REMAINING UNSUBSCRIBED CAPACITY ON THE LUCKY CORRIDOR PROJECT

As noted above, the Commission allows a developer to seek Commission approval of its capacity allocation approach prior to implementing its approach, and subsequently demonstrate in a compliance filing that the developer's selection of customers is consistent with the approved selection process.⁸⁸ Under ATX ownership Lucky Corridor plans to commence an additional

⁸⁸ See 2013 Policy Statement at P 31.

open solicitation process for the remaining 350 MW of unsubscribed capacity on the Lucky Corridor Project. Applicants request *ex ante* Commission approval of the proposed capacity allocation process set forth below, subject to Applicants' commitment to demonstrate in one or more post-allocation compliance filings that the selection of customers consistent with the Commission-approved process.⁸⁹ Consistent with the Commission's precedent, Applicants have developed objective criteria for both selecting and ranking transmission customers seeking to reserve available capacity on the Lucky Corridor Project through negotiated agreements. Notably Applicants' objective criteria, described below, complies with the Commission's 2013 Policy Statement requirements, and are substantially similar to capacity allocation criteria previously accepted by the Commission for purposes of conducting an open solicitation process.⁹⁰

A. Open Solicitation Process

Applicants' open solicitation process will be designed to reach as many potential customers as possible. Following the close of the ATX transaction and Commission approval of Applicants' requests submitted herein, Applicants will commence the open solicitation process by issuing a detailed notice that will be (1) posted on the Lucky Corridor website and (2) widely distributed through several of the following outlets: energy trade magazines and websites; regional energy publications and targeted periodicals (such as, for example, the American Wind Energy Associations "Wind Energy SmartBrief," Renewable Energy World, and POWER Magazine); and regional news publications (including the Albuquerque Journal, the Santa Fe New Mexican, the Rio Grande Sun and the Union County Leader). The notice will also be sent

⁸⁹ See, e.g., *Grain Belt*, 147 FERC ¶ 61,098.

⁹⁰ See e.g., *Grain Belt*, 147 FERC ¶ 61,098; see also *MATL LLP*, 166 FERC ¶ 61,051 (2019) ("*MATL*"); see also, e.g., *MATL LLP*, Docket No. ER19-151-001 (delegated letter order) (issued Oct. 10, 2019).

via email to a list of parties that Applicants believe may have an interest in participating in the open solicitation process.

The initial notice of Applicants' open solicitation will include detailed information on the Lucky Corridor Project, including: (i) the anticipated project size, type of line, capacity rating, and points of interconnection to existing infrastructure (*e.g.*, lines, substations); (ii) status of the Project's development (*e.g.*, remaining available project capacity); (iii) anticipated in-service date(s); (iv) form of precedent agreement; (v) potential for expansion; and (vi) reference to the Project website. The Project website will, in turn, provide details of a webinar to be presented by ATX for the purpose of educating potential bidders about the open solicitation. The website will also be updated as needed to reflect pertinent changes to the Project and will provide a form of precedent agreement. Finally, both the open solicitation notice and the Project website will identify all key points of contact for the Project.

1. Capacity Allocation Process

The Commission has recognized that merchant transmission developers and customers may require individualized contract terms to meet project-specific needs. To accommodate these needs, the Policy Statement allows developers to distinguish among prospective customers based on "transparent and not unduly discriminatory or preferential criteria."⁹¹ Applicants have developed objective criteria for both selecting and ranking transmission customers seeking to reserve remaining available capacity on the Lucky Corridor Project through negotiated agreements. Applicants' proposed criteria are intended to incent early movers and minimize commercial risks that could adversely affect the economic viability of the Project. As noted

⁹¹ 2013 Policy Statement at P 28.

above, Applicants' criteria are substantially similar to capacity allocation criteria previously approved by the Commission.⁹²

a) Customer Selection Criteria

Applicants' customer selection criteria are initial screening factors that set the minimum standard for all potential customers who respond to the Project's open solicitation. Potential customers that satisfy the selection criteria will then be ranked according to the ranking criteria (described below) for purposes of phasing negotiations among the selected customers. Both the customer selection criteria and customer ranking criteria will be specified, at a minimum, in Applicants' public notice and Project website, and will be provided to any entity that expresses interest in response to Applicants' broad marketing effort.⁹³

Applicants' proposed customer selection criteria are as follows:⁹⁴

1. A commitment to pursue a customer agreement during the negotiation windows set forth in Applicants' open solicitation notice;
2. Investment grade credit rating or other standards of creditworthiness to be specified in the open solicitation notice;
3. Commitment to a term of firm transmission service reservation for at least ten (10) years; and
4. Firm transmission service reservation for at least 25 MW of capacity.

⁹² See *supra*, note 90.

⁹³ See *SunZia Transmission, LLC*, 160 FERC ¶ 61,074, at P 35 (2017) (finding that SunZia's broad solicitation and customer ranking criteria was conducted in a not unduly discriminatory or preferential manner because, among other things, "the initial screening criteria were made available through [SunZia's] broad marketing effort" and "The Anchor Tenant Criteria were provided to all who expressed interest in response to the broad marketing effort.") ("*SunZia*").

⁹⁴ The Commission has previously approved substantially similar initial customer screening criteria. See *e.g.*, *Grain Belt*, 147 FERC ¶ 61,098 at P 20, 23 (accepting Grain Belt's proposal to initially screen customers according to (1) first mover status, (2) investment grade credit rating, (3) commitment to pay a non-refundable deposit, (4) firm transmission service reservation for at least five years, and (5) firm transmission service reservation for at least 50 MW of capacity). See also, *e.g.*, *MATL LLP*, Docket No. ER19-151-001 (delegated letter order accepting MATL's post-open solicitation report as in compliance with the Commission's January 2019 Order granting MATL negotiated rate authority, subject to future compliance filing) (issued Oct. 10, 2019).

Collectively, Applicants' proposed customer selection criteria will advance the commercial viability of the Project by significantly reducing the Project's risk, cost, and potential for ongoing delay. However, Applicants recognize that depending on the specific needs of potential customers, it may be necessary to modify the minimum selection criteria to maximize potential customers' access to the Project. Therefore, to the extent necessary, as the solicitation proceeds and Applicants receive feedback from potential customers, Applicants may relax the customer selection criteria to accommodate more potential customers. In the event that any such adjustments are made, they will be publicly noticed and applied in a non-discriminatory or non-preferential manner to all potential customers.

b) Customer Ranking Criteria

As noted above, Applicants anticipate having an initial time-defined negotiation phase, followed by additional negotiation phases as needed, to subscribe the full amount of the Project's remaining capacity. Applicants have developed customer ranking criteria for the purpose of evaluating the subset of customers participating in each phase of the negotiations. Potential customers will not be required to satisfy all of the ranking criteria. Rather, each ranking factor described below will be a basis for evaluating a potential customer in light of the unique and specific needs of both the Project and the customer. While the ranking criteria may ultimately result in distinctions among potential customers (*e.g.*, different rates, terms, or conditions), the criteria will be applied in a non-discriminatory manner.

Applicants propose the following customer ranking criteria:⁹⁵

1. Timeliness of execution of firm transmission service request, including payment of reservation charges;
2. Larger capacity reservation;
3. Relative level of creditworthiness and nature of security provided;
4. Material pricing terms contained in the initial offer;
5. Longer term of service;
6. Strategic location or other indicia of constructability; and
7. Willingness to accept *pro forma* commercial terms.

Applicants will apply these ranking criteria to customers that satisfy the customer selection criteria to develop a subset of one or more customers that are eligible for the initial phase of bilateral negotiations for transmission service rights. To the extent the full capacity of the Project is not reserved through the initial phase of negotiations, Applicants will use the same ranking criteria to develop additional subsets of customers for subsequent phases of bilateral negotiations.

Consistent with the *Chinook* and the Commission's 2013 Policy Statement, Applicants commit to disclose the results of the customer selection and ranking process and bilateral negotiations to the Commission in one or more detailed post-allocation compliance filings. In

⁹⁵ The Commission has previously approved substantially similar customer ranking criteria. *See e.g., Grain Belt*, 147 FERC ¶ 61,098 at PP 20, 23 (accepting Grain Belt's proposal to rank potential customers for the initial and subsequent negotiation phases based on: (1) level of creditworthiness, (2) early commitment to the project's development cycle, (3) project risk-sharing, (4) ability of the customer to assist with the project's development needs, including obtaining necessary siting approvals and governmental authorizations, (5) longer term of service, (6) larger capacity reservation, (7) ability to access project converter stations to deliver or receive power, (8) competition of generation development milestones or evidence of need for project capacity, (9) commercial operation date for generation or timing of transmission service commencement date, and (10) the material price terms contained in initial offers); *see also SunZia*, 160 FERC ¶ 61,074 at PP 29, 35 (finding that SunZia's ranking of potential anchor tenant customers based on, among other things, the potential customers' experience in the project's region, including "acres under lease" and "key relationships" in the region); *see also Nogales Transmission, L.L.C.*, et al., 161 FERC ¶ 61,009, at PP 35, 41 (2017) (conditionally finding that Nogales' customer ranking criteria, including the customers' "ability to access the Project to deliver or receive power, (e.g., proximity of generation resource to that line, transmission service queue positions on adjacent systems)," satisfies the Commission's open solicitation process requirements).

the event the Project is oversubscribed, Applicants' compliance filing will describe its decision to (i) prorate or not prorate capacity among eligible customers and/or (ii) expand or not expand the capacity of the Project to meet the additional demand.

Applicants' capacity allocation process described above fully complies with the Commission's 2013 Policy Statement requirements and related Commission precedent.⁹⁶ As a result, Applicants respectfully request that the Commission issue an order approving Applicants' proposed open solicitation process for the remaining capacity on the Lucky Corridor Project, subject to a future compliance filing, as described above.

V. REQUEST FOR CONFIDENTIAL TREATMENT

Pursuant to 18 C.F.R. § 388.112(b) of the Commission's regulations, Applicants request privileged (CUI//PRIV) treatment for the anchor customer option agreements, attached hereto as Attachment B. These agreements contain sensitive commercial information and are the product of arm's-length negotiations. As such, public disclosure could severely hamper the ability of Applicants (and potentially the bidders) to engage in any future transactions of a similar nature. In accordance with section 388.112(b)(2), Applicants have provided as Attachment D to this filing a proposed protective agreement based on the Commission's Model Protective Order.

⁹⁶ See *supra* notes 94 & 95.

VI. CORRESPONDENCE AND COMMUNICATION

All correspondence and communications regarding this filing should be sent to the following individuals:⁹⁷

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VII. ATTACHMENTS

In addition to this filing letter, Applicants include with this filing the following attachments:

- Attachment A: Chart of ATX Affiliates
- Attachment B: Copy of Executed Anchor Customer Option Agreements (Confidential)
- Attachment C: Affidavit of Lynn Chapman Greene
- Attachment D: Proposed Protective Agreement

VIII. CONCLUSION

For the reasons set forth above, Applicants respectfully request that the Commission issue an order by August 2, 2020: (1) authorizing Lucky Corridor to sell transmission capacity on the Projects at negotiated rates under Ameren's ownership and granting Applicants' request to continue waiver of certain Commission regulations; (2) approving the open solicitation process for the Lucky Corridor and Mora Line Projects, and thus fulfilling the Commission's post selection report requirement for the open solicitation process carried out to date and affirming

⁹⁷ To the extent necessary, Applicants respectfully request waiver of Rule 2003(b)(3) of the Commission's regulations to permit all of the Applicants' representatives to be placed on the official service list for this proceeding.

Applicants' ability to rely on the executed anchor customer option agreements; and (3) approving Applicants' request to sell the remaining capacity of the Lucky Corridor Project pursuant to the proposed open solicitation process, subject to one or more future compliance filings.

Respectfully submitted,

/s/ Christopher R. Jones

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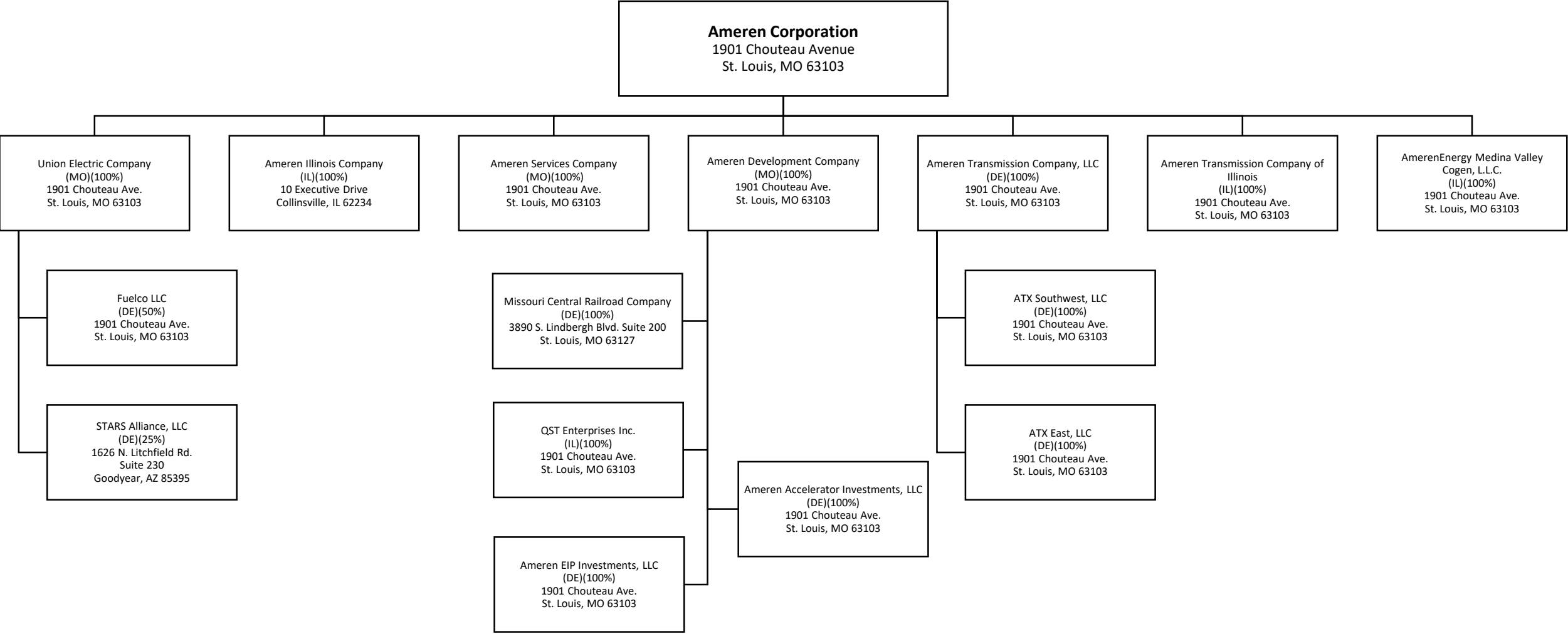
Attorneys for

Ameren Transmission Company

Dated: June 2, 2020

Attachment A

ATX Affiliate Chart



Attachment B

**Anchor Customer Option Agreements
(Privileged Materials Redacted)**

Attachment C

Affidavit of Lynn Chapman Greene

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

**Ameren Transmission Company
Lucky Corridor, LLC
Mora Line, LLC**

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Docket No. ER20-____-000

**AFFIDAVIT OF
LYNN CHAPMAN GREENE**

I. INTRODUCTION

Q. Please state your name and business address.

A. My name is Lynn Chapman Greene. My business address is 6001 E. Dartmouth Ave., Denver, Colorado 80222. I am currently the majority owner, Manager, and the Chief Executive Officer of Lucky Corridor, LLC (“Lucky Corridor” or the Company”), which maintains offices at that address.

Q. What are your principle areas of responsibility for Lucky Corridor?

A. Lucky Corridor, and its wholly-owned subsidiary Mora Line, LLC (“Mora Line”), are engaged in the development of two transmission projects: the Lucky Corridor Project and the Mora Line Project (together, the “Projects”), as well as the development of further opportunities. Since Lucky Corridor’s formation, I have overseen all aspects of Lucky Corridor’s work, with particular focus on the commercial aspects of its business strategies, including investment, financing, marketing transmission capacity, and negotiation and documentation of agreements.

1 **Q. Please describe your educational background and business experience.**

2 A. I am an attorney, with an active license in Colorado, Registration # 10204. I graduated
3 from the University of Colorado with a B.A. in 1971, and earned my J.D. there in
4 December, 1979. I was admitted to the Colorado Bar in April of 1980 and have practiced
5 law since then. I formed Lucky Corridor in 2007 and began working for it full time in
6 2009.

7 **Q. Please summarize the purpose of your Affidavit.**

8 A. I am submitting my Affidavit in support of the application of Ameren Transmission
9 Company (“ATX”), Lucky Corridor, and Mora Line (together, “Applicants”) in the above-
10 referenced proceeding. Specifically, Applicants request an order from the Federal Energy
11 Regulatory Commission (“Commission”) making three related findings:

- 12 • First, that Lucky Corridor and Mora Line will each maintain their previously
13 granted negotiated rate authority following a pending transaction whereby ATX
14 will become the upstream owner of the Lucky Corridor and Mora Line companies,
15 and of their transmission projects;
- 16 • Second, that the open solicitation process followed to date, and resulting in certain
17 executed anchor customer option agreements, complies with the Commission’s
18 negotiated rate policies; and,
19 • Third, that the going-forward capacity allocation process proposed by Applicants
20 for the remaining capacity on the Lucky Corridor transmission project is consistent
21 with the Commission’s negotiated rate policies, subject to a future post-solicitation
22 filing demonstrating conformance with the proposed process.
23
24

25 The purpose of my Affidavit is to provide information regarding the open solicitation
26 process followed to date to market capacity for the Lucky Corridor and Mora Line
27 transmission projects. I also provide information regarding the anchor customer option
28 agreements that have been entered into to date as a result of that process.

1 **II. BACKGROUND**

2 **Q. Please briefly describe the Lucky Corridor merchant transmission project.**

3 A. The Lucky Corridor merchant transmission project (“Lucky Corridor Project”) was
4 originally conceived of as a 93-mile replacement upgrade of Tri-State Generation and
5 Transmission Association, Inc.’s (“Tri-State”) existing Gladstone to Taos 115-kV
6 transmission line to a double-circuit 230-kV transmission line. The upgrade was expected
7 to add 850 megawatts (“MW”) of capacity to the existing 250 MW on the Tri-State line.

8 As explained in Lucky Corridor’s 2015 filing with the Commission, discussed in
9 more detail below, at that time it appeared more likely than not that the Lucky Corridor
10 Project would ultimately be changed to a 345-kV single-circuit configuration. Like the
11 230-kV configuration originally proposed, the 345-kV line would provide 850 MW of
12 transmission capacity. The route would also be 130 miles (as compared with 93 miles for
13 the 230-kV configuration) and would connect directly connect to Public Service Company
14 of New Mexico’s (“PNM”) Ojo substation. Lucky Corridor explained that the final
15 decision between the two project configurations would depend on several regulatory and
16 market factors.

17 Currently, the planned configuration for the Lucky Corridor Project is substantially
18 similar to the updated configuration described in the 2015 filing, with minor modifications.
19 Specifically, the Lucky Corridor Project will be a 62-mile stand-alone 345-kv transmission
20 line interconnecting with the Company’s Springer Substation, Tri-State’s Springer and
21 Taos substations. Consistent with Lucky Corridor’s original proposal, the Lucky Corridor
22 Project will terminate at Tri-State’s Taos substation for potential delivery to PNM’s
23 transmission system at Ojo substation.

1 **Q. Please briefly describe the Mora Line merchant transmission project.**

2 **A.** The Mora Line merchant transmission project (“Mora Line Project”) was initially proposed
3 as a 102-mile, 115-kv transmission line with 180 MW of capacity. As currently planned,
4 the Mora Line Project will continue to be configured as a transmission line with 180 MW
5 of capacity. However, the Mora Line Project will now connect to PNM’s Arriba substation
6 for ultimate transmission to the PNM system, which includes Four Corners.

7 **Q. Briefly describe the history of the negotiated rate authority granted for the Projects.**

8 **A.** On May 22, 2012, as supplemented on June 28, 2012, Lucky Corridor submitted in Docket
9 No. ER12-1832 an application for authorization to allocate up to 70 percent of the Lucky
10 Corridor Project’s capacity to anchor customers through an anchor customer pre-
11 subscription process. By order dated October 1, 2012, the Commission granted Lucky
12 Corridor’s request, subject to Lucky Corridor filing a report to the Commission after the
13 end of the open solicitation process detailing the result of the anchor tenant process, the
14 terms of the agreements reached, and the relevant facts and circumstances leading to the
15 agreements. *Lucky Corridor, LLC*, 141 FERC ¶ 61,002, at P 23 (2012).

16 Subsequently, in 2015, Lucky Corridor filed with the Commission (i) a request to
17 amend its previously-granted negotiated rate authority to allow it to pre-subscribe up to
18 100 percent of the Lucky Corridor Project’s deemed capacity via an open solicitation
19 process, and (ii) a request for authorization to pre-subscribe up to 100 percent of the Mora
20 Line Project pursuant to an open solicitation process. In its 2015 filings, Lucky Corridor
21 explained that, because its presubscription efforts were ongoing for the Lucky Corridor
22 Project, it would be premature at such time to submit a formal report to the Commission as
23 required in its 2012 order. As a result, on April 27, 2015, the Commission issued an order

1 granting Lucky Corridor's requests, subject to Lucky Corridor filing a formal report to the
2 Commission on the capacity allocation process for the Projects that demonstrate
3 compliance with the Commission's open solicitation requirements following the
4 conclusion of its anchor customer negotiations. *Lucky Corridor, LLC, et al.*, 151 FERC ¶
5 61,072, at P 37 (2015).

6 **III. OPEN SOLICITATION PROCESS**

7 **Q. Please describe the open solicitation process used for the Lucky Corridor and Mora**
8 **Line Projects.**

9 A. Although the Lucky Corridor and Mora Line Projects are separate, stand-alone projects,
10 each improving reliability and capacity in diverse regions of New Mexico, and able to be
11 built whether or not the other is built, they do provide capacity for similar needs:
12 transmission for generation projects, including wind and solar renewable energy generation
13 projects, in northeastern and eastern New Mexico, into the transmission systems of the
14 incumbent regional utilities for transmission on their systems to various delivery points
15 from which electricity is now distributed to load, including Four Corners, a well-known
16 market hub.

17 The Lucky Corridor and Mora Line Projects followed substantially the same open
18 solicitation process. Specifically, since early 2013, Lucky Corridor has made the public
19 aware of capacity availability for the Lucky Corridor and Mora Line Projects through its
20 website,¹ newspaper advertisements, and attendance at industry meetings and functions. In
21 particular, the website posting notified potential transmission customers of Lucky
22 Corridor's open solicitation process and explained to interested parties that bids may be

¹ See <https://luckycorridor.com/>.

1 selected based on “credit rating, ‘first mover’ status, and customers’ willingness to share
2 risks[.]” The website posting also set forth:

- 3 • specific information about the proposed location and technical
4 specifications of the Projects, including the proposed end points of the line,
5 the type of line, and the project size/capacity;
- 6 • developer contact information, should interested parties wish to receive a
7 copy of a draft anchor customer agreement or request any additional
8 information about the Projects; and
- 9 • an explanation that the lines may be upgraded, if there is sufficient interest.

10 The website posting was periodically revised to reflect any changes to the amount of
11 available transmission capacity open for solicitation, the anticipated in-service date of the
12 Projects, and the allocation process.

13 In 2014, I learned that the New Mexico State Land Office was offering to auction
14 on the Union County, New Mexico courthouse steps the right to develop wind energy
15 resources on State lands, including those contiguous with privately-owned land Gallegos
16 Wind Farm already controlled. Through full page advertisements run over ten weeks in
17 various New Mexico newspapers, the State advertised to the public this opportunity to bid
18 at auction on the right to develop wind energy on State lands in a well-documented,
19 superior wind resource region within New Mexico. I recognized that any entity that
20 acquired electricity generation project development rights on these lands would have a
21 need for transmission capacity, so the Company simultaneously advertised, on the same
22 page as the State Land Office advertisements, the availability of transmission capacity the
23 Company is developing in the region. I also attended the auction held by the New Mexico
24 State Land Office whereby Gallegos Wind Farm was the sole party to bid in the auction

1 and thus the only party to win the right to develop renewable energy on about 19,000 acres
2 of the State's wind resource land in Union County, New Mexico.²

3 With respect to the advertising described above, the Company placed
4 advertisements notifying potential interested parties of its open solicitation process in The
5 Albuquerque Journal on four dates in April and May 2014, and in the Union County Leader
6 on four dates in April 2014. It also placed a recorded advertisement with Newsline For the
7 Blind the week of April 30, 2014. The Company both described its efforts to develop
8 transmission to move energy from the wind zone to the regional market hub, Four Corners,
9 and also, in the ads, expressed the Company's willingness, in this merchant transmission
10 region with no Regional Transmission Organization, to make further upgrades to the weak
11 local system, to serve the needs of any potential generation development customer.

12 The Company also continued to engage in routine meetings and telephone calls
13 with energy project developers and attend industry meetings and conferences. Lucky
14 Corridor's development of the Lucky Corridor and Mora Line Projects has also been
15 covered by a number of widely-viewed online industry publications.³

16 The advertising campaign described above did in fact lead to the negotiations
17 culminating in the three executed anchor customer agreements for 180 MW on the Mora
18 Line Project and 500 MW on the Lucky Corridor Project with Gallegos Wind Farm, which

² See Staci Matlock, *State leases land near Clayton for 500-megawatt project*, (June 1, 2014), THE NEW MEXICAN, available at <http://www.windaction.org/posts/40580-state-leases-land-near-clayton-for-500-megawatt-wind-project#.XmpnBahJFaR> (last visited March 31, 2020).

³ See e.g., North American Windpower, *Lucky Corridor Transmission Project Signs Up Wind Farm*, <https://nawindpower.com/lucky-corridor-transmission-project-signs-up-wind-farm> (last visited March 31, 2020); see also, e.g., ElectricNet, *Lucky Corridor Transmission Project To Bring New Mexico's Clean Energy Into Western U.S. Power Grid*, <https://www.electricnet.com/doc/lucky-corridor-transmission-project-to-bring-new-mexico-s-clean-energy-into-western-u-s-power-grid-0001> (last visited March 31, 2020); see also, e.g., *Regional Grid Upgrade Project Gets Lucky*, (June 1, 2012) T&D WORLD MAGAZINE, available at <https://www.tdworld.com/overhead-transmission/article/20961470/regional-grid-upgrade-project-gets-lucky> (last visited March 31, 2020).

1 acquired rights to develop on State lands. At the time the agreements were entered into,
2 Gallegos Wind Farm was the only entity to respond to Lucky Corridor's open solicitation
3 process.

4 **Q. Did you continue the open solicitation process after the three anchor customer option**
5 **agreements were executed with Gallegos Wind Farm?**

6 A. Yes. In addition to maintaining the website posting since 2013, Lucky Corridor
7 continued to engage in telephone calls with well-known and regional project developers
8 who may be interested in capacity on the Projects. Moreover, Lucky Corridor continued
9 to have a presence at industry meetings, conferences, and other related events. In 2018, I
10 also conducted an interview for an online news series by *Transmission Hub* regarding the
11 ongoing development of the Lucky Corridor and Mora Line Projects, including a
12 discussion of the location of the Projects, the Projects transmission capacity, and the
13 benefits of the Projects to the region.⁴

14 Regardless of these continued efforts, in the years following the execution of the
15 anchor customer option agreements with Gallegos Wind Farm in 2013 and 2014, no other
16 entity has emerged that is willing to commit to the remaining available firm transmission
17 capacity on the Lucky Corridor Project.

18 **Q. Please describe the status of the open solicitation process for the Lucky Corridor and**
19 **Mora Line Projects.**

20 A. As described above, Lucky Corridor has executed three anchor customer option
21 agreements with Gallegos Wind Farm for capacity on the Lucky Corridor and Mora Line
22 Projects. However, up to 350 MW of additional capacity remains unsubscribed on the

⁴ "Power Moves: An Interview with Lucky Corridor CEO Lynn Chapman Greene" (June 22, 2018),
available at <https://www.transmissionhub.com/articles/2018/06/powermoves-an-interview-with-lucky-corridor-ceo-lynn-chapman-greene.html> (last visited March 30, 2020).

1 Lucky Corridor Project. As a result of the pending transaction with ATX, Applicants seek
2 to receive Commission approval of the open solicitation process Lucky Corridor has
3 completed to date. However, following the transaction, it is my understanding that ATX
4 may continue to engage in an additional open solicitation process as specified in the
5 application submitted in this proceeding for any remaining capacity on the Lucky Corridor
6 Project.

7 **IV. EXECUTED ANCHOR CUSTOMER OPTION AGREEMENTS**

8 **Q. Please describe the anchor customer option agreements entered into to date as a result**
9 **of Lucky Corridor's open solicitation process.**

10 A. Lucky Corridor has entered into two capacity agreements for the Lucky Corridor Project,
11 totaling 500 MW out of the available 850 MW of available capacity. In addition, Lucky
12 Corridor has entered into one capacity agreement for the Mora Line Project for the full 180
13 MW of capacity on the Project.

14 Both anchor customer option agreements for the Lucky Corridor Project are with a
15 sole anchor customer—Gallegos Wind Farm, which is developing about 79,000 acres of
16 renewable energy resource land in New Mexico. These two agreements are for a total of
17 500 MW of transmission capacity on the Lucky Corridor Project. Aside from the capacity
18 presubscribed under these anchor customer option agreements, a total of up to 350 MW of
19 transmission capacity on the Lucky Corridor Project remains unsubscribed to date.

20 The entire capacity of the Mora Line Project—*i.e.*, 180 MW—has also been
21 allocated to Gallegos Wind Farm pursuant to an anchor customer option agreement.

1 **Q. Aside from the Gallegos Wind Farm, did any other potential customers approach**
2 **Lucky Corridor expressing interest in available capacity on the Lucky Corridor or**
3 **Mora Line Projects?**

4 A. As indicated above, despite Lucky Corridor's expansive and continuous outreach efforts,
5 in the years following Gallegos Wind Farm's execution of the anchor customer option
6 agreements, no other entity has emerged that is willing to commit to the remaining firm
7 capacity on the Lucky Corridor Project. Beginning in late 2019, Lucky Corridor has seen
8 signs of increasing interest in the remaining capacity on the Lucky Corridor Project and
9 has engaged in preliminary conversations with interested parties. However, it is my
10 understanding that any subsequent allocation of the remaining capacity will be pursuant to
11 the prospective solicitation process described in the Applicants' filing following the close
12 of the pending transaction between ATX and the Company.

13 **Q. Did Lucky Corridor receive any requests for capacity on one or both of the Projects**
14 **that exceeded the available capacity?**

15 A. No. Gallegos Wind Farm—the sole anchor customer on both the Lucky Corridor and Mora
16 Line Projects—did not request capacity that exceeded the Projects' available capacity. In
17 fact, up to 350 MW of capacity remains unsubscribed to date on the Lucky Corridor
18 Project. As a result, Lucky Corridor did not need to select between various potential
19 customers, decide whether to prorate capacity, or decide whether to expand one or both of
20 Projects to meet customer demand.

21 **Q. Do any of the anchor customer option agreements contain rates or terms more**
22 **favorable than the rates or terms contained in the other agreements?**

23 A. No. All of the executed anchor customer option agreements were developed using the
24 same draft anchor customer option agreement provided by Lucky Corridor.

1 **Q. Does this conclude your Affidavit?**

2 A. Yes, it does.

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

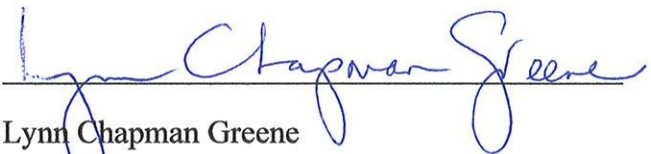
**Ameren Transmission Company
Lucky Corridor, LLC
Mora Line, LLC**

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Docket No. ER20-____-000

**AFFIDAVIT OF
LYNN CHAPMAN GREENE**

I, Lynn Chapman Greene, being duly sworn, certify that the attached affidavit in this docket was prepared by me or under my supervision and that the information contained in such affidavit is true and correct to the best of my knowledge, information, and belief.

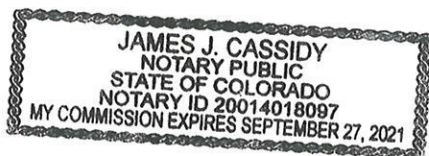


Lynn Chapman Greene

Subscribed and sworn to before me this 15th day of April 2020.



Notary Public



Attachment D

Form of Protective Agreement

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

**Ameren Transmission Company
Lucky Corridor, LLC
Mora Line, LLC**

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Docket No. ER20-____-000

PROTECTIVE AGREEMENT

This Protective Agreement (“Agreement”) is entered into this ____ day of _____, 20____ by and between Ameren Transmission Company, Lucky Corridor, LLC and Mora Line, LLC (“Applicants”) and _____ (“Intervenor”), and shall govern the use of all Privileged and/or Critical Energy/Electric Infrastructure Information (“CEII”) Materials produced by Applicants to Intervenor, or vice versa, in connection with the proceeding before the Federal Energy Regulatory Commission (the “Commission”) in the captioned proceeding. Applicants and Intervenor are sometimes referred to herein individually as a “Party” or jointly as the “Parties.”

1. Applicants filed in the above-referenced proceeding Privileged Material and/or CEII, as those terms are defined herein. Intervenor is a Participant in such proceeding, as the term Participant is defined in 18 C.F.R. Section 385.102(b), or has filed a motion to intervene or a notice of intervention in such proceeding. Applicants and Intervenor enter into this Agreement to govern the use of Privileged Material and/or CEII produced by, or on behalf of, Applicants and/or Intervenor in the above-referenced proceeding. Notwithstanding any order terminating such proceeding, this Agreement shall remain in effect unless and until specifically modified or terminated by the Commission or a court of competent jurisdiction. In the event this Agreement terminates, the obligations of Reviewing Representatives to maintain the confidentiality of Privileged Material and/or CEII as provided hereunder shall remain in effect for 18 months following the date of termination.

2. The Commission’s regulations¹ and its policy governing the labelling of controlled unclassified information (“CUI”)² establish and distinguish the respective designations of Privileged Material and CEII. As to these designations, this Agreement provides that a Party:

- A. *may* designate as Privileged Material any material which customarily is treated by that Party as commercially sensitive or proprietary or material subject to a legal privilege, which is not otherwise available to the public, and which, if disclosed, would subject that Party or its customers to risk of competitive disadvantage or

¹ Compare 18 C.F.R. § 388.112 with 18 C.F.R. § 388.113.

² Notice of Document Labelling Guidance for Documents Submitted to or Filed with the Commission or Commission Staff (May 3, 2018) (unreported).

other business injury; and

- B. *must* designate as CEII, any material that meets the definition of that term as provided by 18 C.F.R. §§ 388.113(a), (c).

3. For the purposes of this Agreement, the listed terms are defined as follows:

- A. Party and Parties: As defined above.

- B. Privileged Material:³

- i. Material (including depositions) provided by a Party in response to discovery requests or filed with the Commission, and that is designated as Privileged Material by such Party;⁴
- ii. Material that is privileged under federal, state, or foreign law, such as work-product privilege, attorney-client privilege, or governmental privilege, and that is designated as Privileged Material by such Party;⁵
- iii. Any information contained in or obtained from such designated material;
- iv. Any other material which is made subject to this Agreement by a Presiding Administrative Law Judge (“Presiding Judge”) or the Chief Administrative Law Judge (“Chief Judge”) in the absence of a Presiding Judge or where no presiding judge is designated, the Commission, any court, or other body having appropriate authority, or by agreement of the Parties (subject to approval by the relevant authority);
- v. Notes of Privileged Material (memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses Privileged Material);⁶ or
- vi. Copies of Privileged Material.

³ The Commission’s regulations state that “[f]or the purposes of the Commission’s filing requirements, non-CEII subject to an outstanding claim of exemption from disclosure under FOIA, . . . , will be referred to as privileged material.” 18 C.F.R. § 388.112(a). The regulations further state that “[f]or material filed in proceedings set for trial-type hearing or settlement judge proceedings, a participant’s access to material for which privileged treatment is claimed is governed by the presiding official’s protective order.” 18 C.F.R. § 388.112(b)(2)(v).

⁴ See *infra* P 11 for the procedures governing the labeling of this designation.

⁵ The Commission’s regulations state that “[a] presiding officer may, by order . . . restrict public disclosure of discoverable matter in order to . . . [p]reserve a privilege of a participant. . . .” 18 C.F.R. § 385.410(c)(3). To adjudicate such privileges, the regulations further state that “[i]n the absence of controlling Commission precedent, privileges will be determined in accordance with decisions of the Federal courts with due consideration to the Commission’s need to obtain information necessary to discharge its regulatory responsibilities.” 18 C.F.R. § 385.410(d)(1)(i).

⁶ Notes of Privileged Material are subject to the same restrictions for Privileged Material except as specifically provided in this Agreement.

vii. Privileged Material does not include:

- a. Any information or document that has been filed with and accepted into the public files of the Commission, or contained in the public files of any other federal or state agency, or any federal or state court, unless the information or document has been determined to be privileged by such agency or court; or
- b. Information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Agreement.

C. Critical Energy/Electric Infrastructure Information (“CEII”): As defined at 18 C.F.R. §§ 388.113(a), (c).

D. Non-Disclosure Certificate: The certificate attached to this Agreement, by which persons granted access to Privileged Material and/or CEII must certify their understanding that such access to such material is provided pursuant to the terms and restrictions of this Agreement, and that such persons have read the Protective Agreement and agree to be bound by it. All executed Non-Disclosure Certificates must be provided to the Parties.

E. Reviewing Representative: A person who has signed a Non-Disclosure Certificate and who is:

- i. Commission Trial Staff designated as such in this proceeding;
- ii. An attorney who has made an appearance in this proceeding for a Party;
- iii. Attorneys, paralegals, and other employees associated for purposes of this case with an attorney who has made an appearance in this proceeding on behalf of a Party;
- iv. An expert or an employee of an expert retained by a Party for the purpose of advising, preparing for, submitting evidence or testifying in this proceeding;
- v. A person designated as a Reviewing Representative by order of a Presiding Judge, the Chief Judge, or the Commission; or
- vi. Employees or other representatives of Parties appearing in this proceeding with significant responsibility for this docket who do not engage in the activities identified in Section 7.A through 7.C (unless Applicants expressly agree that a particular individual may be a Reviewing Representative).

4. Privileged Material and/or CEII shall be made available under the terms of this Agreement only to Parties and only to their Reviewing Representatives as provided in Paragraphs 6-10 of this Agreement. The contents of Privileged Material, CEII, or any other form of information that copies

or discloses such materials shall not be disclosed to anyone other than in accordance with this Agreement and shall be used only in connection with this specific proceeding.

5. All Privileged Material and/or CEII must be maintained in a secure place. Access to those materials must be limited to Reviewing Representatives specifically authorized pursuant to Paragraphs 7-9 of this Agreement.

6. Privileged Material and/or CEII must be handled by each Party and by each Reviewing Representative in accordance with the Non-Disclosure Certificate executed pursuant to Paragraph 9 of this Agreement. Privileged Material and/or CEII shall not be used except as necessary for the conduct of this proceeding, nor shall such material (or the substance of its contents) be disclosed in any manner to any person except a Reviewing Representative who is engaged in this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding. Reviewing Representatives may make copies of Privileged Material and/or CEII, but such copies automatically become Privileged Material and/or CEII. Reviewing Representatives may make notes of Privileged Material, which shall be treated as Notes of Privileged Material if they reflect the contents of Privileged Material.

7. If a Reviewing Representative's scope of employment includes any of the activities listed under this Paragraph 7, such Reviewing Representative may not use information contained in any Privileged Material and/or CEII obtained in this proceeding for a commercial purpose (*e.g.*, to give a Party or competitor of any Party a commercial advantage):

- A. Energy marketing;
- B. Direct supervision of any employee or employees whose duties include energy marketing; or
- C. The provision of consulting services to any person whose duties include energy marketing.

8. In the event that a Party wishes to designate a person not described in Paragraph 3.E above as a Reviewing Representative, the Party must seek agreement from the Party providing the Privileged Material and/or CEII. If an agreement is reached, the designee shall be a Reviewing Representative pursuant to Paragraph 3.E of this Agreement with respect to those materials. If no agreement is reached, the matter must be submitted to a Presiding Judge, the Chief Judge, or the Commission for resolution.

9. A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Privileged Material and/or CEII pursuant to this Agreement until three business days after that Reviewing Representative first has executed and served a Non-Disclosure Certificate.⁷ However, if an attorney qualified as a Reviewing Representative has executed a Non-Disclosure Certificate, any participating paralegal, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so.

⁷ During this three-day period, a Party may file an objection with the other Party, a Presiding Judge or the Commission contesting that an individual qualifies as a Reviewing Representative, and the individual shall not receive access to the Privileged Material and/or CEII until resolution of the dispute.

Attorneys designated Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this Agreement, and must take all reasonable precautions to ensure that Privileged Material and/or CEII are not disclosed to unauthorized persons. All executed Non-Disclosure Certificates must be served on the Parties.

10. Any Reviewing Representative may disclose Privileged Material and/or CEII to any other Reviewing Representative as long as both Reviewing Representatives have executed a Non-Disclosure Certificate. In the event any Reviewing Representative to whom Privileged Material and/or CEII are disclosed ceases to participate in this proceeding, or becomes employed or retained for a position that renders him or her ineligible to be a Reviewing Representative under Paragraph 3.E of this Agreement, access to such materials by that person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Agreement and the Non-Disclosure Certificate for as long as the Protective Agreement is in effect.

11. All Privileged Material and/or CEII in this proceeding filed with the Commission, submitted to a Presiding Judge, or submitted to any Commission personnel, must comply with the Commission's *Notice of Document Labelling Guidance for Documents Submitted to or Filed with the Commission or Commission Staff*.⁸ Consistent with those requirements:

- A. Documents that contain Privileged Material must include a top center header on each page of the document with the following text: CUI//PRIV.
- B. Documents that contain CEII must include a top center header on each page of the document with the following text: CUI//CEII.
- C. Documents that contain both Privileged Material and CEII must include a top center header on each page of the document with the following text: CUI//CEII//PRIV.
- D. The specific content on each page of the document that constitutes Privileged Material and/or CEII must also be clearly identified. For example, lines or individual words or numbers that include both Privileged Material and CEII shall be prefaced and end with "BEGIN CUI//CEII//PRIV" and "END CUI//CEII//PRIV."

12. If either Party desires to include, utilize, or refer to Privileged Material or information derived from Privileged Material in testimony or other exhibits during any hearing in this proceeding in a manner that might require disclosure of such materials to persons other than Reviewing Representatives, that Party first must notify both counsel for the disclosing Party and any Presiding Judge, and identify all such Privileged Material. Thereafter, use of such Privileged Material will be governed by procedures determined by the Parties or, if applicable, the Presiding Judge.

13. Nothing in this Agreement shall be construed as precluding any Party from objecting to the

⁸ Notice of Document Labelling Guidance for Documents Submitted to or Filed with the Commission or Commission Staff (May 3, 2018) (unreported).

production or use of Privileged Material and/or CEII on any appropriate ground.

14. Nothing in this Agreement shall preclude any Party from requesting a Presiding Judge (or the Chief Judge in a Presiding Judge's absence or where no presiding judge is designated), the Commission, or any other body having appropriate authority, to find this Agreement should not apply to all or any materials previously designated Privileged Material pursuant to this Agreement. A Presiding Judge (or the Chief Judge in a Presiding Judge's absence or where no presiding judge is designated), the Commission, or any other body having appropriate authority may alter or amend this Agreement as circumstances warrant at any time during the course of this proceeding.

15. Each Party governed by this Agreement has the right to seek changes in it as appropriate from a Presiding Judge (or the Chief Judge in a Presiding Judge's absence or where no presiding judge is designated), the Commission, or any other body having appropriate authority.

16. Subject to Paragraph 17, a Presiding Judge (or the Chief Judge in a Presiding Judge's absence or where no presiding judge is designated), or the Commission shall resolve any disputes arising under this Agreement pertaining to Privileged Material according to the following procedures. Prior to presenting any such dispute to a Presiding Judge, the Chief Judge, or the Commission, the Parties to the dispute shall employ good faith best efforts to resolve it.

- A. Any Party that contests the designation of material as Privileged Material shall notify the Party that provided the Privileged Material by specifying in writing the material for which the designation is contested.
- B. In any challenge to the designation of material as Privileged Material, the burden of proof shall be on the Party seeking protection. If a Presiding Judge, the Chief Judge, or the Commission finds that the material at issue is not entitled to the designation, the procedures of Paragraph 17 shall apply.
- C. The procedures described above shall not apply to material designated by a Party as CEII. Material so designated shall remain subject to the provisions of this Agreement, unless a Party requests and obtains a determination from the Commission's CEII Coordinator that such material need not retain that designation.

17. The designator will have five (5) days in which to respond to any pleading filed with a Presiding Judge, the Chief Judge, or the Commission requesting disclosure of Privileged Material. Should such Presiding Judge, the Chief Judge, or the Commission, as appropriate, determine that the information should be made public, such Presiding Judge, the Chief Judge, or the Commission will provide notice to the designator no less than five (5) days prior to the date on which the material will become public. This Agreement shall automatically cease to apply to such material on the sixth (6th) calendar day after the notification is made unless the designator files a motion with such Presiding Judge, the Chief Judge, or the Commission, as appropriate, with supporting affidavits, demonstrating why the material should continue to be privileged. Should such a motion be filed, the material will remain confidential until such time as the interlocutory appeal or certified question has been addressed by the Motions Commissioner or Commission, as provided in the Commission's regulations, 18 C.F.R. §§ 385.714, 385.715. No Party waives its rights to seek additional administrative or judicial remedies after a Presiding Judge, Chief Judge, or the

Commission issues a decision regarding Privileged Material or the Commission's denial of any appeal thereof or determination in response to any certified question. The provisions of 18 C.F.R. §§ 388.112 and 388.113 shall apply to any requests under the Freedom of Information Act (5 U.S.C. § 552) for Privileged Material and/or CEII in the files of the Commission.

18. Privileged Material and/or CEII shall remain available to Parties until the later of 1) the date an order terminating this proceeding no longer is subject to judicial review, or 2) the date any other Commission proceeding relating to the Privileged Material and/or CEII is concluded and no longer subject to judicial review. After this time, the Party that produced the Privileged Material and/or CEII may request (in writing) that all other Parties return or destroy the Privileged Material and/or CEII. This request must be satisfied with within fifteen (15) days of the date the request is made. However, copies of filings, official transcripts and exhibits in this proceeding containing Privileged Material, or Notes of Privileged Material, may be retained if they are maintained in accordance with Paragraph 5 of this Agreement. If requested, each Party also must submit to the Party making the request an affidavit stating that to the best of its knowledge it has satisfied the request to return or destroy the Privileged Material and/or CEII. To the extent Privileged Material and/or CEII are not returned or destroyed, they shall remain subject to this Agreement.

19. Nothing in this Agreement shall be deemed to preclude either Party from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this Agreement. Neither Party waives the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Privileged Material and/or CEII.

IN WITNESS WHEREOF, the Parties each have caused this Agreement to be signed by their respective duly authorized representatives as of the date first set forth above.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Representing Applicants

Representing Intervenor

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Ameren Transmission Company)	
Lucky Corridor, LLC)	
Mora Line, LLC)	
)	
)	

Docket No. ER20-____-000

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Privileged Material and/or Critical Energy/Electric Infrastructure Information (CEII) is provided to me pursuant to the terms and restrictions of the Protective Agreement dated _____, 20__ by and between Applicants and Intervenor concerning materials in Federal Energy Regulatory Commission Docket No. _____ (the "Protective Agreement"), that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it.

I understand that the contents of Privileged Material and/or CEII, any notes or other memoranda, or any other form of information that copies or discloses such materials, shall not be disclosed to anyone other than in accordance with the Protective Agreement. I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

By: _____

Printed Name: _____

Title: _____

Representing: _____

Date: _____