

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Lockhart Power Company

Docket No. OA07-22-000

ORDER GRANTING REQUEST FOR WAIVER OF ORDER NO. 890

(Issued July 13, 2007)

1. On May 14, 2007, Lockhart Power Company (Lockhart) requested waiver of the requirements of Order No. 890,¹ with the exception of the transmission planning requirements. This order grants Lockhart a waiver of the requirement to have an open access transmission tariff (OATT) on file subject to certain conditions, described below.

Background

2. In Order No. 890, the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis.² Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability, open and coordinated planning of transmission systems, and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights, and reassignments of transmission capacity.

¹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007).

² *See id.* at P 26-61.

3. Each public utility transmission provider is required to file revisions to its OATT to conform to the revised *pro forma* OATT. The Commission stated that the criteria for waiver of the requirements of Order No. 890 is unchanged from that used to evaluate requests for waiver under Order Nos. 888³ and 889.⁴

Request for Waiver

4. Lockhart is a small electric utility regulated by the Commission and the South Carolina Public Service Commission. Lockhart is predominately engaged in retail power sales and serves only one wholesale customer, the City of Union, South Carolina (Union), pursuant to a pre-OATT grandfathered bundled sales agreement.⁵ Lockhart is interconnected with Duke Power Company (Duke) and has minimal transmission facilities that are devoted to delivering generation from Duke to Union.

5. Lockhart notes that it was granted waiver of Order No. 889 in 1996 due to the fact that it was a small public utility and not a tight power pool member.⁶

6. Lockhart requests waiver of the requirements of Order No. 890, with the exception of the transmission planning requirements,⁷ on the same basis as the Commission granted

³ *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁴ *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049 (1997), *reh'g denied*, 81 FERC ¶ 61,253 (1997).

⁵ Service Agreement No. 3 under Lockhart's FERC Electric Tariff, Original Volume No. 1

⁶ *Soyland Power Coop., Inc.*, 78 FERC ¶ 61,095 (1997).

⁷ According to Lockhart, the transmission planning requirements adopted in Order No. 890 should apply to Lockhart insofar as its interconnection with the Duke transmission grid may affect regional transmission congestion or may bear on other's transmission investment decisions.

Lockhart waiver of the requirements of Order No. 889. Lockhart asserts that there has been no change in circumstances since the Commission granted Lockhart waiver of the requirements of Order No. 889. Lockhart claims that the configuration of its transmission facilities limits or substantially obviates transmission access for any parties other than Union. Furthermore, Lockhart notes that it has never received a request for service under its OATT. Lockhart asserts that the requirements of Order No. 890 would therefore require it to develop procedures and/or mechanisms that would likely never be used. Lockhart states that if it receives a request for transmission service under its OATT in the future, it will file within 60 days a revised OATT with the Commission in compliance with Order Nos. 889 and 890.

Procedural Matters

7. Notice of the filing was published in the *Federal Register*, 72 Fed. Reg. 29,146 (2007), with interventions, comments and protests due on or before June 13, 2007. No protests or adverse comments were filed.

Discussion

8. In *Black Creek Hydro, Inc.*,⁸ the Commission stated that it would grant requests for waiver of Order No. 888 by public utilities that could show that they own, operate, or control only limited and discrete transmission facilities. However, if the public utility receives a request for transmission service, it would have 60 days to file a *pro forma* OATT with the Commission and to comply with any additional requirements that are effective on the date of the request. The Commission also explained that waiver of Order No. 889 would be appropriate: (1) if the applicant owns, operates, or controls only limited and discrete transmission facilities; or (2) if the applicant owns, operates, or controls an integrated transmission grid, if it is a small public utility, unless it is a member of a tight power pool, or other circumstances are present which indicate that a waiver would not be justified. The Commission clarified that waiver would be granted unless and until an entity evaluating its transmission complains that it could not get information necessary to complete its evaluation, at which time, compliance must be made within 60 days of the complaint.

9. As stated above, the criteria for waiver of Order No. 890 is unchanged from that used to evaluate requests for waiver under Order Nos. 888 and 889. Although Lockhart requested waiver of Order No. 890, we interpret this more generally as a request for waiver of the requirement to have an OATT on file. Based on the statements in

⁸ 77 FERC ¶ 61,232 (1996) (*Black Creek*).

Lockhart's filing, we find that Lockhart's transmission facilities are limited and discrete. We note in particular that no entity has applied for service under Lockhart's OATT and Lockhart's assertion that it is unlikely that it will receive such interconnection requests in the future. In light of these circumstances, we grant Lockhart a waiver of the requirement to have a *pro forma* OATT on file.

10. The Commission grants the waiver of the requirement to have an OATT on file on two conditions. First, consistent with *Black Creek*, Lockhart must file a *pro forma* OATT in compliance with Order Nos. 888 and 890, and any additional requirements, within 60 days of receiving a request for transmission service from a customer. Second, consistent with the commitments made by Lockhart in its request, Lockhart must participate in the regional planning activities undertaken by transmission providers in its region pursuant to Order No. 890.⁹

The Commission orders:

Lockhart's request for waiver of the requirement to have an OATT on file is granted, subject to the conditions stated above.

By the Commission. Commissioner Wellinghoff concurring with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

⁹ Because we are waiving the requirement for Lockhart to have an OATT on file, it is not necessary for Lockhart to file a formal Attachment K to its OATT.

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WELLINGHOFF, Commissioner, concurring:

Lockhart Power Company (Lockhart) has committed to comply with the requirements of Order No. 890 regarding coordinated, open and transparent transmission planning. The Commission has conditioned the grant of a waiver of the requirement to have an OATT on file on Lockhart's participation in the regional planning activities undertaken by the transmission providers in its region pursuant to Order No. 890. I commend Lockhart for its commitment to the goals of coordinated, open and transparent transmission planning and agree with the Commission's action here. Nonetheless, I take this opportunity to reiterate that Lockhart must fully participate in all planning activities required by Order No. 890, including but not limited to the identification of demand resources to be assessed in the transmission planning process.

For these reasons, I respectfully concur.

Jon Wellinghoff
Commissioner