

125 FERC 61,081
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.

Tieton Hydropower, LLC

Docket Nos. ER08-1449-000
OA08-155-000

ORDER ACCEPTING RATE SCHEDULE AND GRANTING WAIVERS,
SUBJECT TO CONDITIONS

(Issued October 22, 2008)

1. In this order, the Commission accepts an initial transmission rate schedule submitted by Tieton Hydropower, LLC (Tieton), and grants Tieton's request for waivers of the requirements of Order Nos. 888¹, 890,² section 35.28 of the Commission's

¹ *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, 61 Fed. Reg. 21540 (May 10, 1996), FERC Stats. & Regs., ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12274 (Mar. 14, 1997), 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).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs., ¶ 31,241 (2007), *order on reh'g and clarification*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs., Regs. Preambles ¶ 31,261 (2007); *order on reh'g and clarification*, Order No. 890-B, 73 Fed. Reg. 39,092 (July 8, 2008), 123 FERC ¶ 61,299 (2008).

regulations,³ Order No. 889,⁴ and part 37 of the Commission's regulations,⁵ subject to conditions.

I. Background

2. Tieton is a limited liability company that owns and operates a run-of-the-reservoir hydropower generating facility located at the base of the U.S. Bureau of Reclamation's Tieton Dam located in Yakima County, Washington. The generating facility has a nameplate capacity of 13.6 MW with a capability of producing as much as 19 MW for short periods of time, and 2007 annual production of 5.9 average MW. Tieton states that the generating facility is committed to the Eugene Water and Electric Board under a long-term power purchase agreement. The generating facility interconnects with PacifiCorp's transmission system at the Tieton substation via a 21-mile long, 115 kV transmission line.

3. On August 27, 2008, Tieton submitted an initial transmission rate schedule in Docket No. ER08-1449-000 containing five agreements between Tieton and Benton Rural Electric Association (Benton): (1) an Interconnection and Transmission Agreement⁶ that provides Benton with 6 MW of counter-flow transmission capacity in exchange for Tieton's use of Benton's right-of-way; (2) an Operation and Maintenance Agreement; (3) an Asset Ownership and Co-location Agreement; and (4) Amendment Nos. 1 and 2, which supplement the service agreements.

4. More specifically, Tieton states that the agreements provide that: (1) Benton will allow Tieton to construct a transmission line along Benton's existing right-of way; (2) Benton is entitled to use 11 miles of the transmission line as a joint-use segment for its retail service; (3) Benton will supply certain maintenance and vegetation removal functions on the transmission line; (4) Tieton will provide Benton with 6 MW of counter-flow capacity on the transmission line; and (5) Tieton will allow for the delivery of

³ 18 C.F.R. § 35.28 (2008).

⁴ *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs., ¶ 31,035, *clarified*, 77 FERC ¶ 61,335 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs., ¶ 31,049, *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

⁵ 18 C.F.R. part 37 (2008).

⁶ General Terms and Conditions for Joint Participation of the Parties in the Electrical Interconnection Facilities Involving the Tieton Dam Hydroelectric FERC Project No. 3701 (Interconnection and Transmission Agreement).

energy to the point of delivery with no wheeling charges or other charges associated with the use of transmission line.

5. Tieton submitted a request for waiver of the requirements under Order Nos. 888, 889, and 890 and section 35.28 and part 37 of the Commission's regulations on September 11, 2008 in Docket No. OA08-155-000. In the filing, Tieton states that its ownership of transmission facilities is limited to the transformers housed at the Tieton substation and the 21-mile 115 kV radial line that is necessary to transmit the generating facility's output to the electrical grid. In addition, Tieton states that the facilities do not interconnect with other sources of generation and that they are not located near major load centers. Further, Tieton states that it has not received any requests for transmission service over its interconnection line.

6. Because its radial transmission facilities are limited and discrete, Tieton states that waiver of the Order Nos. 888, 889, and 890 requirements under these circumstances is consistent with Commission precedent.⁷ Tieton commits that, in the event that Tieton receives a request for transmission service, it will file an Open Access Transmission Tariff (OATT) with the Commission within 60 days of its receipt of such a request and will comply with any additional requirements that are in effect on the date of the request. Moreover, Tieton states that should the Commission take future action in response to a complaint regarding available information about transmission services on Tieton's interconnection line, Tieton will comply with the requirements of Order No. 889 within the prescribed time period.

II. Notice of Filing

7. Notice of the August 27, 2008 filing in Docket No. ER08-1449-000 was published in the *Federal Register*, with interventions and protests due on or before September 17, 2008.⁸ None was filed. The Commission's Secretary issued notice of the September 11, 2008 filing in Docket No. OA08-155-000 on September 12, 2008, with interventions and protests due on or before October 2, 2008. None was filed.

III. Discussion

8. Our review indicates that Tieton's proposed rate schedule appears to be just and reasonable, and has not been shown to be unjust, unreasonable, unduly discriminatory or

⁷ See, e.g., *Jersey Central Power & Light Co., et al.*, 87 FERC ¶ 61,014 (1999); *Niagara Mohawk Power Corp, et al.*, 89 FERC ¶ 61,124 (1999); *Northern States Power Co.*, 76 FERC ¶ 61,250 (1996); *Black Creek Hydro, Inc. et al. (Black Creek)*, 77 FERC ¶ 61,232 (1996).

⁸ 73 Fed. Reg. 51803, 52,344 (2008).

preferential or otherwise unlawful. Accordingly, the Commission will accept Tieton's Rate Schedule FERC No. 1 for filing, effective October 26, 2008, as requested.

9. The Commission has granted waivers from the requirements of Order Nos. 888 and 889 in the past when a public utility has demonstrated that it owns, operates, or controls only limited and discrete transmission facilities, i.e., facilities that do not form an integrated grid, until such time that the public utility receives a request for transmission service.⁹ In Order No. 890, the Commission stated that the same *Black Creek* criteria would govern whether such an entity should be granted a waiver from the requirements of Order No. 890.¹⁰

10. In the instant case, the Commission finds that Tieton has demonstrated that the facilities at issue here are discrete facilities that fall within the Commission's criteria established in *Black Creek* to obtain a waiver of the filing requirements in Order Nos. 888, 889, 890. Accordingly, the Commission grants Tieton's request for a waiver of these requirements, subject to the following conditions: (1) if Tieton receives a request for transmission service, it will file with the Commission a *pro forma* OATT within 60 days of the request; (2) if complaints are received that entities evaluating their transmission needs are not afforded sufficient information to evaluate these needs, then Tieton must establish and maintain an Open Access Same-time Information System (OASIS) within 60 days of the Commission's receipt of the complaint; (3) if complaints are received that Tieton has used its access to information about transmission to unfairly benefit its own sales or those of an affiliate, then Tieton's waiver of the standards of conduct will terminate; and (4) our approval of Tieton's waiver request is based on the facts represented in its application. If any changed circumstances occur that are pertinent to its waiver status or its status as a small public utility, Tieton must report these circumstances to the Commission within 60 days.

The Commission orders:

(A) Tieton's rate schedule is hereby accepted for filing, effective October 26, 2008, as discussed in the body of this order.

⁹ In *Black Creek*, 77 FERC at 61,941-945, the Commission described the criteria it would use to evaluate whether a small public utility should be granted a waiver from the requirements of Order Nos. 888 and 889.

¹⁰ See Order No. 890 at P 1759.

(B) Tieton's request for waivers of Order Nos. 888, 889 and 890, and section 35.28 and part 37 of the Commission's regulations is hereby granted, subject to conditions, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.