

131 FERC ¶ 61,051
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

New Harquahala Generating Company, LLC

Docket Nos. OA10-6-000
TS10-3-000

ORDER GRANTING REQUEST FOR WAIVERS

(Issued April 19, 2010)

1. This order grants a request by New Harquahala Generating Company, LLC (Harquahala) for waiver of Order Nos. 888,¹ 889,² 890,³ and of section 35.28 and Parts 37 and 358 of the Commission's regulations.⁴

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, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *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 *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, *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

³ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

⁴ 18 C.F.R. § 35.28, 18 C.F.R. Part 37, and 18 C.F.R. Part 358 (2009). *See Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs.

(continued...)

Background

2. Harquahala states that it owns and operates a 1,092 MW natural gas-fired electric generating facility located in Maricopa County, Arizona.⁵ Harquahala explains that its generating facility is interconnected to the Hassayampa Switchyard through Harquahala's 26 mile, 500 kV sole-use radial transmission line and a dedicated 500 kV switchyard (Interconnection Facilities). Harquahala states that the Hassayampa Switchyard is owned by a consortium of utilities, operated by the Salt River Project and located in the balancing authority area of Arizona Public Service Company (APS).

3. On January 29, 2010, Harquahala filed a request for waiver of Order Nos. 888, 889, 890, and the Standard of Conduct requirements in the Commission's regulations.⁶ Specifically, Harquahala requests waiver of the requirement of Order Nos. 888 and 890 to file an open access transmission tariff (OATT), the requirements of Order No. 889 to establish an Open-Access Same Time Information System (OASIS), and the Standards of Conduct requirements.⁷ In support of these waivers, Harquahala states that its

¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161, *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166, *order on reh'g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines sub nom. National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006); *see Standards of Conduct for Transmission Providers*, Order No. 690, FERC Stats. & Regs. ¶ 31,237, *order on reh'g*, Order No. 690-A, FERC Stats. & Regs. ¶ 31,243 (2007); *see also Standards of Conduct for Transmission Providers*, Order No. 717, 73 Fed. Reg. 63,796 (Oct. 27, 2008), FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, FERC Stats. & Regs. ¶ 31,297, *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009).

⁵ Harquahala January 29, 2010 Request for Waiver at 1.

⁶ Harquahala's Request for Waiver was originally assigned to Docket Nos. ER03-721-014, OA10-6-000, and TS10-3-000. On February 23, 2010, the Commission issued an errata notice cancelling Docket No. ER03-721-014 in this proceeding.

⁷ Harquahala was granted market-based rate authority in 2003. *See* Harquahala January 29, 2010 Request for Waiver at 1 (*citing New Athens Generating Co., LLC*, Letter Order, Docket No. ER03-719-000, *et al.* (Jun. 6, 2003)). In 2008, Harquahala was determined to be a transmission owner and transmission operator, required to comply with the North American Electric Reliability Corporation (NERC) Reliability Standards in *New Harquahala Generating Co., LLC*, 123 FERC ¶ 61,173, at P 44, *clarified*, 123 FERC ¶ 61,311 (2008).

Interconnection Facilities are not interconnected to any other generators and that it is interconnected with the transmission system of the Salt River Project only at a single point at the Hassayampa Switchyard. Harquahala specifically states that electric power flows over the Interconnection Facilities in only two circumstances: (1) when power generated by Harquahala is being marketed at wholesale, or (2) when start-up, back-up and maintenance power is being delivered to Harquahala for its own use because it is not operating.⁸ In addition, Harquahala states that it does not own, operate, or control any transmission facilities other than the interconnection facilities described above. Furthermore, Harquahala states that the Commission has granted such requests to a number of owners and operators of generating facilities that own large-scale generator interconnection facilities.⁹

4. Notice of Harquahala's filing was published in the *Federal Register*, 75 Fed. Reg. 6376 (2010), with protests or interventions due on or before February 19, 2010. APS filed a motion to intervene. No protests or comments were filed.

Discussion

5. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), APS' timely and unopposed motion to intervene serves to make it a party to this proceeding.

6. Order Nos. 888 and 890 require public utilities to file an OATT prior to providing transmission service. Order No. 889 requires public utilities to establish an OASIS and to comply with the Standards of Conduct requirements which, under Order No. 717, have been revised and recodified at Part 358 of the Commission's regulations.¹⁰ In prior orders, the Commission has explained the standards for waiver of, or exemption from, some or all of the requirements of Order Nos. 888, 889, 890, and the Standards of Conduct requirements of the Commission's regulations.¹¹

7. The Commission may grant requests for waiver of Order Nos. 888 and 890 to public utilities that can show that they own, operate, or control only limited and discrete

⁸ Harquahala January 29, 2010 Request for Waiver at 2.

⁹ *Id.* at 3 nn.7-14 (citing eight recent Commission orders).

¹⁰ *See* n.4 *supra*.

¹¹ *See, e.g., Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 22 (2005); *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996).

transmission facilities (facilities that do not form an integrated transmission grid), until such time as the public utility receives a request for transmission service. Should the public utility receive such a request, the Commission has determined that the public utility must file with the Commission a *pro forma* tariff within 60 days of the date of the request, and must comply with any additional requirements that are effective on the date of the request.¹²

8. Similarly, the Commission has also determined that the “limited and discrete” standard applies to waiver of Order No. 889 and the Standards of Conduct requirements.¹³ A waiver of the requirement to establish and maintain an information system (i.e., an OASIS) remains in effect until the Commission takes action in response to a complaint by an entity alleging that, in evaluating its transmission needs, the entity could not get the information necessary from Harquahala to complete its evaluation.¹⁴ A waiver from the Standards of Conduct remains in effect unless and until the Commission takes action on a complaint by an entity alleging that Harquahala has used its access to transmission information to unfairly benefit one of Harquahala’s own sales, or an affiliate’s sales.¹⁵

9. Based on the statements in Harquahala’s filing, we find that Harquahala’s transmission facilities are limited and discrete transmission facilities, because they are comprised of a sole-use radial transmission line and switchyard that interconnect

¹² *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232 at 61,941. Harquahala acknowledges that if it receives a request for transmission service from a third party, it will file an OATT with the Commission. Harquahala January 29, 2010 Request for Waiver at 3.

¹³ *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232 at 61,941. Because we grant the requested waiver on the basis that the Interconnection Facilities qualify as “limited and discrete,” we do not need to address the issue of whether Harquahala qualifies for limited waiver under the narrower “small public utility” exception.

¹⁴ *See Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 23; *Milford Wind Corridor, LLC*, 129 FERC ¶ 61,149, at P 26 (2009); *Peetz Logan Interconnect, LLC*, 122 FERC ¶ 61,086, at P 13 (2008).

¹⁵ We note that, as the Commission recently explained, Harquahala must notify the Commission if there is a material change in facts that affect its waiver, within 30 days of such change. *Material Changes in Facts Underlying Waiver of Order No. 889 and Part 358 of the Commission’s Regulations*, 127 FERC ¶ 61,141, at P 5 (2009); *see also Wolverine Power Supply Coop. Inc.*, 127 FERC ¶ 61,159, at n.21 (2009).

Harquahala's generating facilities to a single point at the Hassayampa Switchyard. In light of Harquahala's Interconnection Facilities qualifying as "limited and discrete," we will grant Harquahala waiver of the OATT, OASIS, and Standards of Conduct requirements set forth in Order Nos. 888, 889, and 890 and in section 35.28, and Parts 37 and 358 of the Commission's regulations.

The Commission orders:

Harquahala's request for waiver of the OATT requirements of Order Nos. 888, 889, 890, and of the requirements of section 35.28 and Parts 37 and 358 of the Commission's regulations, is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.