

138 FERC ¶ 61,074
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Mesquite Solar 1, LLC

Docket No. OA11-10-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued January 31, 2012)

1. On August 15, 2011, Mesquite Solar 1, LLC (Mesquite Solar) submitted a request for waiver of certain requirements under Order Nos. 888,¹ 889,² and 890,³ and section 35.28, Part 37, and Part 358 of the Commission's regulations⁴ for a four-mile, 230kV

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), *Order on Clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁴ 18 C.F.R. Part 358 (2011); *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 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

(continued...)

generation-tie line. The Commission grants Mesquite Solar's waiver request, as discussed below.

I. Background

2. Mesquite Solar states that it is developing a 170 MW solar photovoltaic facility that will interconnect to the grid at the Hassayampa Switchyard in Maricopa County, Arizona. The Hassayampa Switchyard is owned by a consortium of utilities, operated by Salt River Project and located in the balancing authority area of Arizona Public Service Company. Specifically, Mesquite Solar explains that the facility will interconnect to the grid via the planned wholly-owned four-mile, 230kV generation-tie line.⁵ Mesquite Solar states that generator-tie line will not comprise an integrated transmission system and will not serve transmission customers. Mesquite Solar also states that the power of the solar facility is fully committed under a long-term Power Purchase Agreement with Pacific Gas and Electric Company.

3. On July 1, 2011, as supplemented on July 27, 2011, Mesquite Solar submitted an application for market-based rates and an accompanying tariff. Mesquite Solar requested an effective date August 30, 2011. In an unpublished letter order issued on August 25, 2011, the Commission accepted Mesquite Solar's tariff for filing and found that the proposed tariff met the Commission's criteria regarding horizontal and vertical market power and met the Commission's requirements to obtain authorization to sell wholesale power at market-based rates.⁶

(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, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, 129 FERC ¶ 61,043, *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123, *order on reh'g*, Order No. 717-C, 131 FERC ¶ 61,045 (2010).

⁵ Mesquite Solar further explains that its 230kv generation-tie line will connect to existing shared generator interconnection facilities that Mesquite Solar will own jointly with its affiliate, Mesquite Power, LLC, and that those facilities will in turn interconnect to the Hassayampa Switchyard via two existing 500kV tie lines approximately 0.3 mile in length. Transmittal Letter at 1-2.

⁶ *Mesquite Solar 1, LLC*, Docket Nos. ER11-3987-000 and ER11-3987-001, (Aug. 25, 2011) (unpublished letter order).

II. Description of Filing

4. Mesquite Solar requests that the Commission waive any requirements applicable to transmission providers, namely the requirement to file an Open Access Transmission Tariff (OATT), to establish and maintain an Open-Access Same-Time Information System (OASIS), and to comply with the Standards of Conduct. Mesquite Solar claims that it qualifies for these waivers because its shared generator interconnection facilities are limited and discrete and do not comprise an integrated transmission system. Specifically, Mesquite Solar requests waiver of the requirements of Order Nos. 888, 889, and 890 and section 35.28, Part 37, and Part 358 of the Commission's regulations,⁷ consistent with prior Commission orders.

5. In support of the waiver request, Mesquite Solar explains that it owns, operates, and controls limited and discrete transmission facilities that are not an integrated component of any electricity grid but merely provide the solar facility with a means to transmit power to the Hassayampa Switchyard.

6. Mesquite Solar states that the Commission has routinely waived these requirements where the applicant demonstrates that it owns, operates, or controls only limited and discrete transmission facilities, rather than an integrated transmission grid, or where the applicant is a small public utility that disposes of no more than 4 million MWh of energy annually. Mesquite Solar states that it satisfies the size criterion of a small public utility by disposing of no more than 4 million MWh of energy annually.⁸

7. Mesquite Solar points out that the Commission has waived its OATT, OASIS, and Standards of Conduct requirements for a number of owners and operators of wind generating facilities that own generator interconnection facilities and cites several such orders.⁹ Mesquite Solar claims that the facts and circumstances in these cited cases are analogous to their facts and circumstances.

⁷ Transmittal Letter at 2-3.

⁸ Mesquite Solar states that its planned solar facility is capable of generating less than 1.5 million MWh annually if operated at a 100 percent capacity factor for every hour of the year. *Id.* at 3.

⁹ *Id.* at 3 & nn. 8-10 (citing *Cedar Creek Wind, et al.*, 134 FERC ¶ 61,159 (2011); *Alta Wind, et al.*, 134 FERC ¶ 61,109 (2011); *Goshen Phase II, LLC, et al.*, 133 FERC ¶ 61,090 (2011)).

8. Mesquite Solar states that, if it receives a request for transmission service, it will file an OATT with the Commission and satisfy all other applicable regulatory requirements.¹⁰

III. Notice of Filing

9. Notice of Applicant's filing was published in the *Federal Register*, 76 Fed. Reg. 53,121 (2011), with protests or motions to intervene due on or before September 6, 2011. None was filed.

IV. Discussion

10. Mesquite Solar seeks waiver of certain requirements under Order Nos. 888, 889, and 890. As explained above, Mesquite supports its waiver request by stating that it does not own, operate, or control any transmission-related equipment other than the discrete facilities interconnecting the solar facility to the Hassayampa Switchyard. Specifically, Mesquite Solar states that the four-mile, 230kv generation-tie line will be wholly owned and solely utilized by Mesquite Solar to interconnect its generating facility to the Hassayampa Switchyard.

11. The Commission will grant Mesquite Solar's requested waivers for the four-mile, 230kv generation-tie line. Order Nos. 888 and 890 require public utilities that own, operate, or control facilities used for the transmission of electric energy in interstate commerce to file an OATT prior to providing transmission service. Order No. 889 and Part 37 of the Commission's regulations¹¹ require public utilities to establish and maintain an OASIS and Order Nos. 889, 2004, and 717 and Part 358 of the Commission's regulations¹² require public utilities to abide by the Commission's Standards of Conduct.¹³ In prior orders, the Commission has enunciated the standards for waiver of, or exemption from, some or all of the requirements of Order Nos. 888, 889, and 890.¹⁴ The Commission has stated that the criteria for waiver of the requirements of

¹⁰ *Id.* at 3.

¹¹ 18 C.F.R. Part 37 (2011).

¹² 18 C.F.R. Part 358 (2011).

¹³ Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,590; Order No. 2004, FERC Stats. & Regs. ¶ 31,155 at P 16; Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 313.

¹⁴ *See, e.g., Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*); *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 22 (2005) (*Entergy*).

Order No. 890 and Order No. 2004¹⁵ are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.¹⁶ Order No. 717 did not change those criteria.¹⁷

12. The Commission may grant requests for waiver of the obligation to file an OATT to public utilities that can show they own, operate, or control only limited and discrete 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.¹⁸

13. The Commission has also determined that waiver of the requirement to establish an OASIS and abide by the Standards of Conduct would be appropriate for a public utility if the applicant (1) owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) is a small public utility that owns, operates, or controls an integrated transmission grid and no other circumstances are present that indicate that waiver would not be justified.¹⁹

14. The Commission has held that waiver of Order No. 889 will remain in effect until the Commission takes action in response to a complaint to the Commission that an entity evaluating its transmission needs could not get the information necessary to complete its

¹⁵ See *Cedar Point Wind, LLC*, 137 FERC ¶ 61,033, at n.16 (2011).

¹⁶ See *Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007); *Alcoa Power Generating Inc.*, 108 FERC ¶ 61,243, at P 27 (2004).

¹⁷ See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 54.

¹⁸ *Black Creek*, 77 FERC at 61,941.

¹⁹ *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at P 3 (2011) (*Black Hills*). As we explained in *Black Hills*, membership or non-membership in a tight power pool is no longer a factor in this determination. Additionally, as we stated in *Black Hills*, size is not relevant to whether waivers are granted to public utilities that participate in a Commission-approved ISO or RTO. *Id.* P 2.

evaluation (for OASIS waivers) or an entity complains that the public utility has unfairly used its access to information about transmission to benefit the utility or its affiliate (for Standards of Conduct waivers).²⁰

15. Based on Mesquite Solar's representations, we find that Mesquite Solar's four-mile, 230kv generation-tie line is limited and discrete. The Mesquite Solar generation-tie line does not form an integrated transmission system and will be used solely by Mesquite Solar to interconnect its wind project to the transmission grid. Accordingly, we shall grant Mesquite Solar waiver of the requirements in Order Nos. 888 and 890 to have an OATT on file. However, if Mesquite Solar receives a request for transmission service, it must file with the Commission a *pro forma* OATT 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 in compliance with Order Nos. 888 and 890.²¹

16. The Commission also will grant Mesquite Solar waiver of the OASIS and Standards of Conduct requirements. We note that Mesquite Solar's waiver of the requirement to establish an OASIS will remain in effect until the Commission takes action in response to a complaint to the Commission that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation.²² Likewise, Mesquite Solar's Standards of Conduct waiver will remain in effect unless and until the Commission takes action on a complaint by an entity that Mesquite Solar has unfairly used its access to information to unfairly benefit itself or its affiliate.²³

²⁰ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997); *Easton Utilities Commission*, 83 FERC ¶ 61,334, at 62,343 (1998)).

²¹ *See Terra-Gen Dixie Valley, LLC*, 132 FERC ¶ 61,215, at P 47 (2010), *order on reh'g*, 134 FERC ¶ 61,021 (2011).

²² *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997)); *Easton Utilities Commission*, 83 FERC ¶ 61,334, at 62,343 (1998).

²³ *Id.* Mesquite Solar must notify the Commission if there is a material change in facts that affect its waiver, within 30 days of the date 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).

The Commission orders:

Mesquite Solar's request for waiver of the requirements of Order Nos. 888, 889, and 890, and of section 35.28, Part 37 and the Standards of Conduct requirements of Part 358 of the Commission's regulations is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.