

140 FERC ¶ 61,006
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Copper Mountain Solar 1, LLC
Copper Mountain Solar 2, LLC

Docket Nos. ER12-1741-000
ER12-1745-000
(Not Consolidated)

ORDER ACCEPTING JOINT USE AGREEMENT, GRANTING REQUEST FOR
WAIVERS AND ACCEPTING CERTIFICATE OF CONCURRENCE

(Issued July 5, 2012)

1. This order accepts a Joint Use Agreement between Copper Mountain Solar 1, LLC (Copper Mountain 1) and Copper Mountain Solar 2 (Copper Mountain 2),¹ effective June 18, 2012, and grants the requested waivers of certain requirements under Order Nos. 888,² 889,³ and 890,⁴ and section 35.28⁵ and Parts 37⁶ and 358 of the

¹ Copper Mountain 1 and 2 are wholly-owned subsidiaries of Sempra Energy, a public utility holding company that wholly owns San Diego Gas & Electric Company (SDG&E).

² *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).

³ *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).

⁴ *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

(continued...)

Commission's regulations.⁷ This order also accepts Copper Mountain 2's Certificate of Concurrence, effective June 18, 2012.

I. Background

2. Copper Mountain 1 owns and operates a 58 MW solar photovoltaic (PV) generation facility near Boulder City, Nevada. The generating facility includes a 34.5kV/230kV collector substation and a generator tie line (Gen-Tie CM1) that extends 0.15 miles and electrically connects the generating facility to the Merchant Switchyard to deliver power to the grid.⁸

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).

⁵ 18 C.F.R. § 35.28 (2011).

⁶ 18 C.F.R. Part 37 (2011).

⁷ 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 (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, FERC Stats. & Regs. ¶ 31,297, *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009), *order on reh'g*, Order No. 717-C, 131 FERC ¶ 61,045 (2010), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011).

⁸ The Merchant Switchyard is jointly owned by Nevada Power Company (Nevada Power) and SDG&E and is currently operated by Nevada Power. Copper Mountain 1 represents that it was informed by CAISO that CAISO intends to file a revised CAISO-Nevada Power Interconnected Control Area Operating Agreement in the near future, relating to the extension of the CAISO Balancing Authority Area to include the Merchant Switchyard. Copper Mountain 1 May 8, 2012 Filing Letter at 5.

3. Additionally, Copper Mountain 1 has been granted authority to sell wholesale energy, capacity, and ancillary services at market-based rates.⁹ The total output of its facility is fully committed under two separate, long-term Power Purchase Agreements (PPA) with Pacific Gas and Electric Company (PG&E).

4. Copper Mountain 2 will own and operate a solar PV generation facility that will generate up to 150 MW.¹⁰ According to Copper Mountain 1, the Copper Mountain 2 facilities will also include a 34.5/230kV collector substation and a new 230kV generator tie line (Gen-Tie CM2) that extends approximately 1.6 miles, electrically connecting Copper Mountain 2 to the Merchant Switchyard. Copper Mountain 1 notes that Copper Mountain 2 has submitted separately an application to sell wholesale energy, capacity, and ancillary services at market-based rates.¹¹ The total output of the Copper Mountain 2 facility will also be fully committed under a 25-year PPA with PG&E.

II. Description of Filings

5. On May 8, 2012, Copper Mountain 1 filed a Joint Use Agreement with Copper Mountain 2. According to Copper Mountain 1, the Joint Use Agreement details, among other things, the terms and conditions under which Copper Mountain 2 will establish, at its own expense, a temporary tap on Gen-Tie CM1 for the purpose of delivering its power to the grid at the Merchant Switchyard pending completion of certain reconfigurations at this substation. In addition, Copper Mountain 1 explains that it will continue to own and operate Gen-Tie CM1, and Copper Mountain 2 will reimburse Copper Mountain 1 a pro-rata share of the operating costs based on its usage of Gen-Tie CM1. Copper Mountain 1 states that, once the reconfigurations are complete, Copper Mountain 2 generating facility will be permanently interconnected directly to the Merchant Substation via Gen-Tie CM2.

6. Copper Mountain 1 contends that the need for the Joint Use Agreement was driven by Copper Mountain 2's contractual obligation to be connected to the grid by June 2012. Copper Mountain 1 states that, because the substation reconfigurations needed to

⁹ *Copper Mountain Solar 1, LLC*, Docket No. ER11-4055-000 (Sept. 9, 2011) (unpublished letter order).

¹⁰ The Copper Mountain 2 Facility is being constructed in separate phases. The first phase of 92 MW is currently under construction with commissioning in blocks set for June 2012.

¹¹ *See* Copper Mountain 2, LLC, Docket No. ER12-1566-000 (Application for Market-Based Rate Authority).

permanently interconnect Copper Mountain 2 are not anticipated to be completed by this time, but instead, by the fourth quarter of 2012, the parties have entered into the Joint Use Agreement.

7. Copper Mountain 1 also claims that the Joint Use Agreement's terms and conditions are consistent with similar agreements the Commission has accepted for filing.¹² Accordingly, Copper Mountain 1 requests that the Commission accept the Joint Use Agreement for filing, effective June 18, 2012, the requested effective date of Copper Mountain 2's market-based rate tariff.

8. Finally, Copper Mountain 1 requests waiver of the following Commission regulatory requirements applicable to transmission providers: the Open Access Transmission Tariff (OATT), the Open-Access Same-Time Information System (OASIS), and the Standards of Conduct. Copper Mountain 1 also requests waiver of section 35.28 and Parts 37 and 358 of the Commission's regulations.¹³

9. In support of the waiver requests, Copper Mountain 1 states that it owns and utilizes Gen-Tie CM1 to interconnect its facility to the grid at the Merchant Switchyard. Copper Mountain 1 asserts that its generator tie line does not comprise an integrated transmission system and is not designed to serve customers. According to Copper Mountain 1, at 0.15 miles in length, Gen-Tie CM1 is "limited and discrete," and is not an integrated network facility, but is only designed to deliver the output of the Copper Mountain 1 facility to the grid at the Merchant Switchyard. Copper Mountain 1 reiterates that the Merchant Substation is within Nevada Power's balancing area authority, not SDG&E's, and will be operated by CAISO in the future.

10. Copper Mountain 1 also asserts that it qualifies as a "small public utility" because it does not dispose of 4 million MWh annually. Even if its facility were to operate at a 100 percent capacity factor during every hour of the year, Copper Mountain 1 states it would only be capable of generating 508,080 MWh annually, significantly less than the 4 million MWh annual threshold for qualification as a "small public utility."

¹² Copper Mountain 1 May 8, 2012 Filing Letter at 6 (citing *Mesquite Solar 1, LLC*, 138 FERC ¶ 61,074 (2012); *Cedar Creek Wind Energy, LLC*, 134 FERC ¶ 61,130 (2011); *Alto Wind I, LLC*, 134 FERC ¶ 61,109 (2011); *Goshen Phase II, LLC and Ridgeline Alternative Energy, LLC*, 133 FERC ¶ 61,090 (2010)).

¹³ Copper Mountain 1 notes that Copper Mountain 2 made similar requests for waiver of the Commission regulations as part of its Market-Based Rate Application. See Copper Mountain 1 May 8, 2012 Filing Letter at 2 n.4.

11. Finally, Copper Mountain 1 commits to filing an OATT with the Commission upon receiving a request for third-party transmission service, and to satisfy any other applicable requirements. Copper Mountain 1 also states that it will notify the Commission within 30 days of any material change in facts that affects its waiver of OASIS and the Standards of Conduct requirements.

12. On May 8, 2012, pursuant to Order No. 714,¹⁴ Copper Mountain 2 submitted a certificate of concurrence in support of the Joint Use Agreement.¹⁵

III. Notice of Filings

13. Notice of Copper Mountain 1's filing was published in the *Federal Register*, 77 Fed. Reg. 28,591 (2012), with protests or motions to intervene due on or before May 29, 2012. None was filed. Copper Mountain 2's filing was published in the *Federal Register*, 77 Fed. Reg. 28,868 (2012), with protests or motions to intervene due on or before May 29, 2012. None was filed.

IV. Discussion

14. The Commission finds the terms and conditions of the Joint Use Agreement to be just and reasonable, and not unduly discriminatory or preferential. Accordingly, we will accept the proposed Joint Use Agreement, effective June 18, 2012, as requested.

15. In addition, the Commission will grant Copper Mountain 1's requested waivers for the shared facilities. Order Nos. 888 and 890 and section 35.28 of the Commission's regulations require public utilities to file an OATT prior to providing transmission service. Order No. 889 and Part 37 of the Commission's regulations require public utilities to establish and maintain an OASIS. Order Nos. 889, 2004, and 717 and Part 358 of the Commission's regulations require public utilities to abide by certain standards of conduct.¹⁶ 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 890.¹⁷ The

¹⁴ *Electronic Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270 (2008).

¹⁵ Copper Mountain 1 notes that the requested effective date of June 18, 2012 was also requested by Copper Mountain 2 in its Application for Market-Based Rate Authority.

¹⁶ 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.

¹⁷ 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*);

(continued...)

Commission has stated that the criteria for waiver of the requirements of Order No. 890 and Order No. 2004¹⁸ are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.¹⁹ Order No. 717 did not change those criteria.²⁰

16. The Commission may grant requests for waiver of the obligation to file an OATT to public utilities that can show that 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 a transmission service request, the Commission has determined that the public utility must file an OATT with the Commission within 60 days of the date of the request, and it must comply with any additional requirements that are effective on the date of the request.²¹

17. The Commission may also grant a public utility's request for waiver of the requirements to establish an OASIS and abide by the Standards of Conduct if it: (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, unless other circumstances are present that

see also Goshen Phase II, LLC and Ridgeline Alternative Energy, LLC, 133 FERC ¶ 61,090 (noting that the Commission will evaluate requests for waiver of Order Nos. 888 and 890 utilizing the same criteria).

¹⁸ Order No. 2004, FERC Stats. & Regs. ¶ 31,155, *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, *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320, *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* Order No. 690, FERC Stats. & Regs. ¶ 31,237, *order on reh'g*, Order No. 690-A, FERC Stats. & Regs. ¶ 31,243; *see also Standards of Conduct for Transmission Providers*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,611 (2007); Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,630 (2008).

¹⁹ *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).

²⁰ *See* Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 54.

²¹ *Black Creek*, 77 FERC ¶ at 61,941.

indicate that a waiver would not be justified.²² Moreover, 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 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).²³

18. Based on the Copper Mountain 1's representations, we find that the shared facilities and the generator tie line are limited and discrete facilities that do not constitute an integrated transmission system for the purpose of the waiver analysis considered in this order. Copper Mountain 1 will only utilize the shared facilities to interconnect with, and deliver its own power to Nevada Power Company's transmission system. Accordingly, we will grant Copper Mountain 1 waiver of the requirements of Order Nos. 888 and 890 and section 35.28 of the Commission's regulations to have an OATT on file. However, if Copper Mountain 1 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.

19. The Commission will also grant Copper Mountain 1 waiver of the requirements of Order No. 889 and Part 37 of the Commission's regulations with respect to OASIS and Order Nos. 889, 2004, and 717 and Part 358 with respect to the Standards of Conduct. We note that Copper Mountain 1'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.²⁴ Likewise, Copper Mountain 1's waiver of the

²² *Id.* Although the Commission originally precluded waiver of the requirements for OASIS and the Standards of Conduct for a small public utility that is a member of a tight power pool, in *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at PP 2-3 (2011), the Commission explained that membership in a tight power pool is no longer a factor in the determination for waiver of Standards of Conduct. Additionally, size is not relevant to whether waivers are granted to public utilities that participate in a Commission-approved Independent System Operator or Regional Transmission Organization.

²³ *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)).

²⁴ *Id.*

Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that Copper Mountain 1 has unfairly used its access to information to unfairly benefit itself or its affiliate.²⁵

20. If Copper Mountain 1 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 regulatory requirements effective on the date of the request in compliance with Order Nos. 888 and 890.²⁶

The Commission orders:

(A) The Joint Use Agreement is hereby accepted for filing, effective June 18, 2012, as requested.

(B) Copper Mountain 1'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 are hereby granted, as discussed in the body of this order.

(C) Copper Mountain 2's Certificate of Concurrence is hereby accepted for filing, effective June 18, 2012, as requested.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁵ *Id.* Copper Mountain 1 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).

²⁶ *Black Creek*, 77 FERC at 61,941.