

134 FERC ¶ 61,096
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

AEE2, L.L.C.

Docket No. ER11-2342-000

ORDER GRANTING REQUEST FOR WAIVERS
AND ACCEPTING LEASE AGREEMENT

(Issued February 11, 2011)

1. This order grants 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 regulations,⁴ and

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. § 35.28, Part 37, and Part 358 (2010).

accepts for filing the jurisdictional service agreement (Agreement)⁵ filed on December 13, 2010, by AEE2, L.L.C. (AEE2), effective December 9, 2010, as requested.

I. Background

2. AEE2 states that the subject Agreement is between AEE2 and AES ES Westover, LLC (ES Westover), which are both Delaware limited liability companies that are indirect, wholly-owned subsidiaries of the AES Corporation (AES).⁶ AEE2 states that both public utilities have market-based rate authority⁷ and are exempt wholesale generators.⁸

3. AEE2 states that it owns the coal-fired Westover Generating Station consisting of Unit 8 (with a capacity of 84 MW) and the permanently retired Unit 7; and the coal-fired Greenidge Generating Station consisting of Unit 3 (with a capacity of 106 MW). It states that the Westover and Greenidge Generating Stations are both located within the balancing authority of the New York Independent System Operator, Inc. (NYISO).

4. AEE2 states that ES Westover is in the process of constructing a 20 MW Grid Stability and Efficiency system (GSE Project) using advance lithium-ion storage batteries at the Westover Generating Station. AEE2 states that the GSE Project will consist of ten 2 MW battery/inverter combinations and that four of these units totaling 8 MW have already been installed and are expected to become operational in December 2010. It

⁵ Lease Agreement by and between AEE2, L.L.C. and AES ES Westover, LLC, dated as of December 9, 2010, designated as AEE2, L.L.C. Rate Schedule FERC No. 1.

⁶ AEE2 states that AES indirectly owns more than 8,400 MW of competitive generating capacity in the United States through public utility subsidiaries having market-based rate authority granted by the Commission under the Federal Power Act (FPA) and qualifying facilities under the Public Utility Regulatory Policies Act of 1978, as amended, plus approximately 3,300 MW of generation through its indirect ownership of Indianapolis Power & Light Co., a traditional, vertically integrated utility located within the footprint of the Midwest Independent Transmission System Operator, Inc. AEE2 December 13, 2010 Filing at 2, note 9.

⁷ *Citing* AES ES Westover, LLC, Docket Nos. ER10-712-000 and ER10-712-001 (unpublished delegated letter order issued April 23, 1999).

⁸ *Citing* AEE2, L.L.C., 87 FERC ¶ 62,018 (1999); AES ES Westover, LLC, Docket No. EG10-21-000, Notice of Self-Certification as an Exempt Wholesale Generator (February 5, 2010).

states that ES Westover intends to install the six additional units totaling 12 MW during the second phase which is expected to become operational in the second quarter of 2011.

5. AEE2 states that the GSE Project will connect to New York State Electric & Gas Corporation's (NYSEG) transmission system pursuant to a Small Generator Interconnection Agreement (SGIA) to be executed between ES Westover, NYSEG and NYISO. In order to accomplish physical interconnection with NYSEG's transmission system, the GSE Project will use the existing interconnection facilities owned by AEE2 and associated with retired Unit 7 at the Westover Generating Station.

6. AEE2 states that ES Westover intends to use the GSE Project to provide regulation service to the NYISO market. ES Westover states that the batteries intended to be installed are capable of greater lagging response times for conventional generation sources. In addition, it states that ES Westover expects that the GSE Project can provide regulation service with lower overall capital cost and greater efficiency than the use of conventional generation for such purposes. AEE2 states that the Agreement memorializes the terms and conditions under which ES Westover is entitled to occupy real property at the Westover Generating Station site and use AEE2's interconnection facilities on a non-exclusive basis for purposes of interconnecting the GSE Project with NYSEG.

II. Effective Date and Request for Waivers

7. AEE2 states that it requests an effective date of December 9, 2010, in order to allow the GSE Project to commence operation as soon as possible, and requests any necessary waivers of the Commission's regulations for these purposes. Further, it requests that the Commission waive any applicable requirements for AEE2 to file an OATT, maintain an OASIS, or adhere to Standards of Conduct for transmission providers, as a result of the sharing of its interconnection facilities with ES Westover pursuant to the Agreement.

8. In support of the waiver request, AEE2 states that it owns or controls only limited interconnection facilities at the Westover Generating Station and the Greenidge Generating Station necessary to connect its generation facilities to the NYISO-controlled transmission system. AEE2 also asserts that it is not a member of tight power pool, and no circumstances are present that indicate a waiver would not be justified. Further, AEE2 states that it is a small public utility that disposes of no more than 4 million MWh of energy annually.⁹

⁹ AEE2 states that AEE2's only operating generation facilities, Westover Unit 8 and Greenidge Unit 4, have production capacities of 84 MW and 106 MW respectively.

III. Notice of Filing

9. Notice of AEE2's December 13, 2010 filing was published in the Federal Register, 76 Fed. Reg. 1419 (2011), with protests or motions to intervene due on or before January 10, 2011. No comments or protests were filed.

IV. Discussion

10. We find good cause to grant the requested waivers and find the terms and conditions of the Agreement to be just and reasonable, and not unduly discriminatory. Accordingly, we will accept the proposed Agreement, to be effective December 9, 2010, as requested.

11. Order Nos. 888 and 890 require public utilities to file a *pro forma* OATT prior to providing transmission service. Order No. 889 requires public utilities to establish an OASIS and abide by certain standards of conduct. 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 and 889.¹⁰ The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and Order No. 2004¹¹ are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.¹² Order No. 717 did not change those criteria.

¹⁰ 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*).

¹¹ *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, 129 FERC ¶ 61,043, *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).

¹² 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).

12. The Commission may grant requests for waiver of the requirements of Order Nos. 888 and 890 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 such a request, the Commission has determined that the public utility 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.¹³

13. The Commission has also determined that waiver of the requirements of Order No. 889 would be appropriate for a public utility: (1) if the applicant owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) if the applicant is a small public utility that owns, operates, or controls an integrated transmission grid, unless it is a member of a tight power pool, or other circumstances are present that indicate that waiver would not be justified.¹⁴ Moreover, the Commission has held that waiver of the requirements 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).¹⁵

14. Based on the statements in AEE2's filing, we find that AEE2's facilities are limited and discrete and do not constitute an integrated transmission system. We find that AEE2 and its affiliate, ES Westover, will only utilize the subject Agreement for purposes of interconnecting the GSE Project with NYSEG. Accordingly, we will grant AEE2's request for waivers of the requirements set forth in Order Nos. 888, 889 and 890, and section 35.28 and Parts 37 and 358 of the Commission's regulations.

15. As noted above, AEE2 meets the Commission's requirements for waiver of the obligation to file a *pro forma* OATT until it receives a request for transmission service from a non-affiliated third party. Should AEE2 receive such a request, it must file a *pro forma* OATT with the Commission within 60 days of the date of the request. Waiver of the OASIS requirements of Order No. 889 will remain in effect until the Commission

¹³ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

¹⁴ *Id.*

¹⁵ *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)).

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. Also, waiver of the Standards of Conduct requirements remains in effect unless and until an entity complains that AEE2 used access to transmission information to unfairly benefit its own sales, or an affiliate's sales. Additionally, AEE2 must notify the Commission if there is a material change in facts that affects the waiver granted by this order, within 30 days of the date of such change.¹⁶

The Commission orders:

(A) The Agreement is hereby accepted for filing, effective December 9, 2010, as requested.

(B) The 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.

¹⁶ See *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).