

141 FERC ¶ 61,122
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.

Pacific Wind Lessee, LLC and
Catalina Solar, LLC

Docket Nos. ER12-2631-000
ER12-2633-000
(not consolidated)

ORDER ACCEPTING SHARED FACILITIES AGREEMENT FOR FILING AND
GRANTING REQUEST FOR WAIVERS

(Issued November 14, 2012)

1. This order accepts for filing the Shared Facilities Agreement (Agreement, SFA) filed by Pacific Wind Lessee, LLC (Pacific Wind) on behalf of itself and Catalina Solar, LLC (Catalina) (collectively, Applicants), effective November 15, 2012, as requested. In addition, this order grants Applicants' request for waiver of certain requirements under Order Nos. 888,¹ 889,² and 890,³ and section 35.28, Part 37,

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

and Part 358 of the Commission's regulations.⁴ Lastly, this order accepts Catalina's Certificate of Concurrence⁵ to the Agreement.

I. Background

2. Applicants state that Catalina and Pacific Wind are wholly-owned subsidiaries of EDF Renewable Energy, Inc. (EDF-RE). Pacific Wind owns and operates an existing 140 Megawatts (MW) wind-powered generating facility in Antelope Valley of Kern County, California. Catalina is developing a 110 MW solar energy generation facility also in the Antelope Valley of Kern County, California, and in the vicinity of Pacific Wind's existing 140 MW facility. Pacific Wind's facility is interconnected with the Whirlwind Substation owned by Southern California Edison within the balancing authority of the California Independent System Operator (CAISO).

3. Applicants explain that the shared facilities will include two separate electrical circuits that will share common poles for some of their distance and will be used to transmit each Applicant's generation to the point of interconnection at the Whirlwind Substation. Applicants state that one circuit will be a 230 kV radial line with a capacity of 400 MWs and approximately 10.5 miles in length, and that the other circuit is a 230 kV radial line with a capacity of 340 MWs and approximately 14 miles in length. They indicate that the transmission line component of the shared facilities will be a radial line that will solely connect the Applicants' generation facilities to the CAISO-controlled transmission grid; therefore, the transmission line component of the shared facilities will not comprise an integrated system nor will it serve other customers not party to the SFA.

⁴ 18 C.F.R. Part 358 (2010); *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).

⁵ Catalina Solar filed a Certificate of Concurrence in Docket No. ER12-2633-000 to adopt Pacific Winds' Rate Schedule No. 2, which is the SFA discussed herein.

4. Applicants state that Pacific Wind has already obtained market-based rate authorization,⁶ and that Catalina is contemporaneously filing for a market-based tariff and petitioning for market-based rate authority.⁷

5. Applicants state that EDF-RE has other wind and solar energy generation projects in various stages of development in the Antelope Valley that are party to the SFA, and under the terms of the SFA, these subsidiary companies share the ownership of segments of the generation-tie lines and related interconnection facilities with the Pacific Wind and Catalina facilities.⁸ Applicants further state that these other projects are expected to be completed between 2014 and 2016, and that each project's controlling entity will file a petition for market-based rate authorization and a certificate of concurrence at the appropriate time. The parties to the SFA have also filed a Petition for Declaratory Order in Docket No. EL12-109-000 requesting that the Commission confirm their priority to firm transmission rights to the two generation-tie lines described above.⁹

II. The Filing

6. The Agreement memorializes the terms and conditions under which the shared facilities and other shared assets will be constructed, owned, utilized, operated, and maintained by the parties to the SFA, including the parties' cost liability. According to Applicants, the Agreement does not establish rates, terms, or conditions for the provision of a jurisdictional service. Catalina and Pacific Wind will not pay fees to each other for their use of the shared facilities. Rather, Catalina, Pacific Wind, and all other parties to

⁶ Pacific Wind received market-based rate authorization in Docket No. ER12-1931-000, issued 7/3/2012.

⁷ Transmittal Letter at 3.

⁸ *Id.* at 3.

⁹ *Id.* Commission Action is pending on the Petition for Declaratory Order for these projects. The generation facilities being developed by these other entities are described by the Applicant as follows: Avalon Wind, LLC is developing a 140 MW wind energy facility, Avalon Wind 2, LLC is developing a 100 MW wind energy facility, Catalina Solar 2, LLC is developing a 40 MW solar energy facility, Pacific Wind 2, LLC is developing a 110 MW wind energy facility, and Valentine Solar, LLC is developing a 100 MW solar energy facility. Applicants state each of these project companies is a party to the SFA.

the SFA will pay a share of the costs of managing, operating, and maintaining the shared facilities.¹⁰

7. Applicants request an effective date of November 15, 2012, to coincide with the date the Applicants expect the Catalina generating facility to begin generating and transmitting test energy on the shared facilities.

8. Applicants also request that the Commission waive any requirements applicable to transmission providers, namely FERC's Open Access Transmission Tariff (OATT), Open-Access Same Time Information System (OASIS), and Standards of Conduct. Specifically, Applicants request 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,¹¹ consistent with prior Commission orders.

9. In support of the waiver request, Applicants explain that they own, operate, and control limited and discrete transmission facilities that are not an integrated component of any electricity grid. Instead, the Applicants state the shared facilities provide Catalina and Pacific Wind and other parties to the SFA with a means to transmit power from their generating facilities to the point of interconnection – the Whirlwind Substation – and then to the CAISO-controlled transmission system. Applicants further state that no joint owner will provide interconnection or transmission service to any other joint owner under the SFA, and all operations and maintenance costs are to be shared among the joint owners proportionally.

10. Applicants state 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.

11. Applicants point 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 share ownership of transmission interconnection facilities.¹²

¹⁰ *Id.* at 3 Applicants state EDF Renewable Asset Holdings, Inc. will provide administrative, operation, and maintenance services to Catalina, Pacific Wind and the remaining co-owner entities, but will not own or operate jurisdictional facilities or sell power at wholesale.

¹¹ Transmittal Letter at 5.

¹² *Id.* at 6 (citing *BP Wind Energy North America, Inc.*, 129 FERC ¶ 61,207, at P 15; *Milford Wind Corridor, LLC*, 129 FERC ¶ 61,149, at P 24 (2009); *Grand Ridge Energy*, 128 FERC ¶ 61,134, at P 17; *Ashtabula Wind, LLC*, 127 FERC ¶ 61,215, at P 10

12. Applicants assert that, if either Catalina or Pacific Wind receives a request for transmission service from a third party, they will file an OATT with the Commission and satisfy all other applicable regulatory requirements.¹³

13. On September 14, 2012, pursuant to Order No. 714,¹⁴ Catalina submitted a certificate of concurrence in support of the Joint Use Agreement.

III. Notice of Filing

14. Notice of Applicants' filing was published in the *Federal Register*, 77 Fed. Reg. 58,985 (2012), with protests or motions to intervene due on or before October 5, 2012. None was filed.

IV. Discussion

15. The Agreement appears to be just and reasonable and has not been shown to be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we will accept the proposed Agreement, to be effective November 15, 2012, as requested.

16. Order Nos. 888 and 890 and section 35.28 of the Commission's regulations¹⁵ 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 regulations¹⁶ requires 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.¹⁷ In prior orders, the Commission has enunciated the standards for exemption,

(2009); *Crystal Lake Wind, LLC*, 127 FERC ¶ 61,213, at P 10 (2009); *Langdon Wind, LLC*, 127 FERC ¶ 61,212, at P 9 (2009)).

¹³ *Id.* at 7.

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

¹⁵ 18 C.F.R. § 35.28 (2012).

¹⁶ 18 C.F.R. Part 37 (2012).

¹⁷ *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*

from some or all of the requirements of Order Nos. 888 and 889.¹⁸ The criteria for waiver of these requirements are unchanged by Order Nos. 890, 2004, and 717.¹⁹

17. 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 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.²⁰

18. The Commission has also determined that waiver 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 other circumstances are present that indicate that waiver would not be justified.²¹ The Commission has held that waiver of Order No. 889

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); *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).

¹⁸ *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*).

¹⁹ *See Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007); Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

²⁰ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

²¹ *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. *See* 18 C.F.R. § 358.1(c) (2012).

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).²²

19. Based on the statements in Applicants' filing, we find that their transmission facilities qualify as limited and discrete. Accordingly, we will grant Applicants 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 Applicants receive a request for transmission service, they 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.²³

20. The Commission will also grant Applicants' request for waiver of the requirements of Order No. 889 and Part 37 of the Commission's regulations with respect to OASIS and Order No. 717 and Part 358 of the Commission's regulations with respect to the Standards of Conduct. We note that the 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, the waiver of the Standards of Conduct requirement will remain in effect unless and until the Commission takes action on a complaint by an entity that Applicants have unfairly used its access to information to unfairly benefit themselves or their affiliates.²⁵

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

²⁴ *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)).

²⁵ *Id.* Applicants 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:

(A) Applicants' proposed Shared Facilities Agreement and Concurrence are hereby accepted for filing, effective November 15, 2012, as requested, as discussed in the body of this order.

(B) Applicants' request for waiver of the requirements under Order Nos. 888 and 890 and section 35.28 of the Commission's regulations to file an OATT, the requirements under Order No. 889 and Part 37 of the Commission's regulations to establish and maintain an OASIS, and the requirements under Order Nos. 889, 2004, and 717, and Part 358 of the Commission's regulations to comply with the Standards of Conduct, is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.