

143 FERC ¶ 61,275
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

CSOLAR IV South, LLC

Docket No. ER13-1558-000

ORDER ACCEPTING CO-TENANCY AND SHARED USE AGREEMENT AND
GRANTING REQUESTS FOR WAIVER

(Issued June 26, 2013)

1. On May 28, 2013, pursuant to section 205 of the Federal Power Act (FPA),¹ CSOLAR IV South, LLC (CSOLAR) filed a Co-Tenancy and Shared Use Agreement (Co-Tenancy Agreement), among CSOLAR, Imperial Valley Solar 1, LLC (IVS-1), and Imperial Valley Solar, LLC (IVS) (collectively, Co-Tenants). In this order, the Commission accepts for filing the Co-Tenancy Agreement, effective June 1, 2013, as requested. We also grant CSOLAR's requests for waiver of the obligation to file an Open Access Transmission Tariff (OATT) at this time, to comply with the Commission's Standards of Conduct, and to establish and maintain an Open Access Same-Time Information System (OASIS), along with sections 35.12(b)(1) and 35.12(b)(5) of the Commission's regulations.²

I. Background

2. CSOLAR is an exempt wholesale generator and is authorized to sell power at market-based rates.³ CSOLAR represents that it is a Delaware limited liability company owned, in part, by Tenaska CSOLAR South Holdings, LLC (99 percent) and Tenaska CSOLAR South, LLC (1 percent).⁴

¹ 16 U.S.C. § 824d (2006).

² 18 C.F.R. § 35.12(b)(1), (5) (2012)

³ See *CSOLAR IV South, LLC*, Docket Nos. ER11-4051-000 and ER11-4051-001 (Sept. 14, 2011) (delegated letter order) (authorizing market-based rate authority and accepting market-based rate tariffs for CSOLAR).

⁴ CSOLAR May 28, 2013 Filing at 2 (CSOLAR Filing).

3. CSOLAR owns and is developing the first phase of the Imperial Solar Energy Center Project (CSOLAR South Project), a ground-mounted photovoltaic solar power generating system to be located in El Centro, California. The 130 MW output of the CSOLAR South Project is fully subscribed pursuant to a 25-year power purchase agreement with San Diego Gas & Electric Company (SDG&E). The CSOLAR South Project will interconnect to transmission facilities owned by SDG&E and operated by California Independent System Operator Corporation (CAISO).⁵

4. IVS-1, together with IVS, is developing the first phase of a 600 MW photovoltaic solar power generating facility located in Imperial County, California (IVS Imperial Project). The IVS Imperial Project will interconnect to the CAISO-controlled grid at the Imperial Valley Substation, which is owned and operated by SDG&E.⁶ CSOLAR states that the 200 MW first phase of the IVS Imperial Project, owned by IVS-1, is currently under construction, and subsequent phases to be owned by other Imperial Valley Solar companies will also be developed.⁷

5. The Co-Tenancy Agreement provides for the shared construction, ownership, and use by the Co-Tenants of an above-ground 230 kV double circuit radial generator tie-line interconnection facility and related facilities for their respective solar photovoltaic generating facilities (Gen Tie-Line Facilities). CSOLAR states that both it and IVS-1 have closed financing on their respective solar photovoltaic facilities, and that IVS-1 will begin to use a portion of the shared facilities, under the terms and conditions of the instant agreement, for the first time beginning on or about July 1, 2013, when IVS-1 commences generating test power.⁸

6. The Co-Tenancy Agreement sets forth the terms and conditions under which the Co-Tenants will share certain easements, construction, ownership, use, and maintenance of the Gen Tie-Line Facilities. The Co-Tenancy agreement also provides for sharing and co-ownership of other ancillary and supporting facilities as are necessary to the Gen Tie-line Facilities, which may be constructed by the Co-Tenants for shared ownership and

⁵ *Id* at 2-3.

⁶ Imperial Valley Solar 1, Application, Docket No. ER12-2286-000, at 3 (filed July 20, 2012).

⁷ CSOLAR Filing at 3. Imperial Valley Solar 2, LLC will own the 150 MW second phase of the IVS Imperial Project; Imperial Valley Solar 3, LLC will own the 150 MW third phase of the IVS Imperial Project; and Imperial Valley Solar 4, LLC will own the 100 MW fourth phase of the IVS Imperial Project.

⁸ *Id*.

use, including the use of a substation bay located at the CSOLAR South Substation by IVS-1 and IVS.⁹

7. Under the Co-Tenancy Agreement, the construction of the shared facilities is being effected on a segment-by-segment basis, based on the Co-Tenant's use of certain "Shared Premises Segments," as shown in Exhibit B-2 of the Co-Tenancy Agreement, and determined by each Co-Tenant's interest or proportionate share. Additionally, an "Installing Co-Tenant" has been identified from among the participants to the Co-Tenancy Agreement to construct and install each segment delineated in the Agreement, among other assigned duties. Thus, Section 2.1(b) of the Co-Tenancy Agreement sets forth specific responsibilities for the construction and installation of each segment, with CSOLAR responsible for Segments A, B, and S and IVS-1 responsible for Segments C and D.¹⁰

8. CSOLAR requests waiver of the Commission's requirements for public utilities to file an OATT prior to providing transmission service, to establish an OASIS, and to abide by the Standards of Conduct. CSOLAR states that it meets the Commission's criteria of these requirements because the facilities at issue here are limited and discrete interconnection facilities that are not part of an integrated transmission system. Additionally, with respect to the OASIS and Standards of Conduct requirement, CSOLAR notes that the 130 MW CSOLAR South Project's annual MWh production falls well below the 4 million MWh annual threshold, which is also typically used by the Commission as a factor to evaluate such requests for waiver.¹¹

9. CSOLAR also requests waiver of any requirements of Part 35 of the Commission's regulations¹² that are not applicable to its filing. Specifically, CSOLAR requests waiver sections 35.12(b)(1) and 35.12(b)(5) of the Commission's regulations, which require an applicant to submit estimates of the revenues and transactions under an initial rate schedule, as well as support for the rate design. CSOLAR asserts that these requirements are not applicable to the instant filing because the Co-Tenancy Agreement provides for the cost sharing arrangements for the Shared Facilities. In addition,

⁹ *Id.*

¹⁰ *Id.* at 5.

¹¹ *Id.* at 8-9.

¹² 18 C.F.R. Part 35 (2012).

CSOLAR also requests waiver of the Commission's 60-day prior notice requirement¹³ in order to permit an effective date of June 1, 2013, for the rate schedule.¹⁴

II. Notice of Filing

10. Notice of CSOLAR's filing was published in the *Federal Register*, 78 Fed. Reg. 34,364 (2013), with motions to intervene, comments, and protests due on or before June 18, 2013. On June 17, 2013, Imperial Irrigation District (Imperial Irrigation) filed a timely Motion to Intervene.

III. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motion to intervene serves to make Imperial Irrigation a party to this proceeding.

B. CSOLAR Filing

12. The Co-Tenancy 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 Co-Tenancy Agreement for filing, to be effective June 1, 2013, as requested.

13. Order Nos. 888¹⁵ and 890¹⁶ and section 35.28 of the Commission's regulations¹⁷ require public utilities that own, operate, or control, facilities used for the transmission of

¹³ 18 C.F.R. § 35.3 (a)(1) (2012).

¹⁴ CSOLAR Filing at 1, 6-7.

¹⁵ *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).

¹⁶ *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

electric energy in interstate commerce to file an OATT prior to providing transmission service. Order No. 889¹⁸ and Part 37 of the Commission's regulations¹⁹ require public utilities to establish an OASIS. Order Nos. 889, 2004,²⁰ and 717²¹ and Part 358 of the Commission's regulations²² require public utilities to abide by certain standards of conduct.²³ 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 890.²⁴

(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).

¹⁷ 18 C.F.R. § 35.28 (2012).

¹⁸ *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).

¹⁹ 18 C.F.R. Part 37 (2012).

²⁰ *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).

²¹ Order No. 717, FERC Stats. & Regs. ¶ 31,280, *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, *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017.

²² 18 C.F.R. Part 358 (2012).

²³ 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.

²⁴ *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*).

The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and Order No. 2004 have not changed from those used to evaluate requests for waiver under Order Nos. 888 and 889.²⁵ Order No. 717 did not change those criteria.²⁶

14. 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 an OATT with the Commission 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.²⁷

15. The Commission has determined that waiver of the requirements 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, unless other circumstances are present that indicate that waiver would not be justified.²⁸ The Commission grants waivers to small public utilities based on the threshold of whether they dispose of no more than 4 million MWh annually.²⁹ 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

²⁵ 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).

²⁶ See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

²⁷ *Black Creek*, 77 FERC at 61,941.

²⁸ *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 because they participate in a Commission-approved Independent System Operator or Regional Transmission Organization. See 18 C.F.R. § 358.1(c) (2012).

²⁹ See *Wolverine Power Supply Coop., Inc.*, 127 FERC ¶ 61,159, at P 15 (2009).

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).³⁰

16. Based on CSOLAR's representations, we find that the Gen Tie-Line Facilities are limited and discrete and do not constitute an integrated transmission system for purposes of the waiver analysis considered in this order. The only transmission service to be provided over the facilities will be to CSOLAR and its Co-Tenants in order to deliver power from the solar projects described in the filing to CAISO's transmission system.³¹ Accordingly, we will grant CSOLAR's requests for waiver of the requirements set forth in Order Nos. 888 and 890, and section 35.28, Part 37, and Part 358 of the Commission's regulations. However, if CSOLAR 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.

17. We will also grant CSOLAR's requests for 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 CSOLAR'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.³² Likewise, CSOLAR's waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that CSOLAR has unfairly used its access to information to unfairly benefit itself or its affiliate.³³

18. In addition, we will grant CSOLAR's request for waivers of sections 35.12(b)(1) and 35.12(b)(5) of the Commission's regulations because the Co-Tenancy Agreement provides for cost sharing arrangements for the shared facilities. We also find that good cause exists to grant CSOLAR's requested waiver of the 60-day prior notice requirement.

³⁰ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997); *Easton Utils. Comm'n*, 83 FERC ¶ at 62,343).

³¹ CSOLAR's application was unclear as to the role its affiliates may play in ownership of the Shared Facilities. However, Commission precedent allows a waiver to continue if the transmission service is merely for an affiliate. *E.g.*, *Limon Wind, LLC*, 141 FERC ¶ 61,064, at P 15 (2012).

³² *See supra* note 29.

³³ *Id.* CSOLAR 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*, 127 FERC ¶ 61,141 at P 5.

The Co-Tenancy Agreement was previously filed with, and accepted by, the Commission,³⁴ but was subsequently terminated due to financing concerns.³⁵ CSOLAR has now resubmitted the Co-Tenancy Agreement after certain project milestones have been achieved.

The Commission orders:

(A) The Co-Tenancy Agreement between CSOLAR, IVS-1 and IVS is hereby accepted for filing, as discussed in the body of this order, effective June 1, 2013, as requested.

(B) CSOLAR's requests for waiver of the Commission's OATT, OASIS, and Standards of Conduct requirements is hereby granted, as discussed in the body of this order.

(C) CSOLAR's request for waiver of the relevant sections of Part 35 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.

³⁴ *Imperial Valley Solar 1, LLC*, Docket No. ER12-2286-000 (Sept. 11, 2012) (delegated letter order).

³⁵ *Imperial Valley Solar 1, LLC*, Docket No. ER13-24-000 (Oct. 17, 2012) (delegated letter order).