

145 FERC ¶ 61,065
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.

Desert Sunlight 250, LLC and
Desert Sunlight 300, LLC

Docket No. ER13-2404-000

ORDER ACCEPTING SHARED FACILITIES AGREEMENT AND GRANTING
REQUEST FOR WAIVERS

(Issued October 24, 2013)

1. In this order, the Commission accepts for filing a proposed Co-Tenancy and Shared Facilities Agreement (Shared Facilities Agreement) between Desert Sunlight 250, LLC (Desert 250), Desert Sunlight 300, LLC (Desert 300) (jointly, Desert Sunlight) and Sunlight Holdings, LLC (Desert Holdings), effective September 20, 2013, as requested. We also grant Desert Sunlight's request for waiver of the Commission's obligations 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 Commission's Standards of Conduct.

I. Background

2. Desert 250 and Desert 300 are wholly-owned subsidiaries of Desert Holdings. Desert Holdings is a wholly-owned subsidiary of Desert Sunlight Investment Holdings, LLC (Desert Investment). Desert Investment is owned by NextEra Desert Sunlight Holdings, LLC,¹ EFS Desert Sun, LLC² and Summit Solar Desert Sunlight, LLC.³

¹ NextEra Desert Sunlight Holdings, LLC is a wholly-owned indirect subsidiary of NextEra Energy Resources, LLC, which in turn is a wholly-owned indirect subsidiary of NextEra Energy, Inc. NextEra Desert Sunlight Holdings, LLC holds a 50 percent direct ownership interest in Desert Investment. Desert Sunlight Transmittal Letter at 3.

3. Desert 250 and Desert 300 own and operate photovoltaic solar generating facilities with the capacity to produce up to 250 MW and 300 MW, respectively. Both facilities are located in Riverside County, California. Both facilities interconnect into the Red Bluff 230 kV bus, which is a 500/230 kV substation owned by Southern California Edison Company (SoCal Edison).⁴ Desert 250 and Desert 300 own, as co-tenants, certain interconnection facilities, including a 12-mile, 230 kV generation tie-line and a set of 230 kV disconnect switches.⁵

4. On September 19, 2013, pursuant to section 205 of the Federal Power Act (FPA),⁶ Desert 250 and Desert 300 jointly filed the Shared Facilities Agreement. The Shared Facilities Agreement between Desert 250 and Desert 300 is intended to enable both companies to deliver power produced by their generating projects to the transmission grid. Desert 250 and Desert 300 own the shared interconnection facilities (Shared Facilities), with each owning an undivided interest in all Shared Facilities in proportion to its co-tenancy percentage interest. Desert 250 owns a 45.45 percent interest in the Shared Facilities and Desert 300 owns a 54.55 percent interest.⁷

5. Under the Shared Facilities Agreement, Desert Holdings will act as general manager of the Shared Facilities.⁸ Desert 250 and Desert 300 are each responsible to

² EFS Desert Sun, LLC is a wholly-owned indirect subsidiary of General Electric Capital Corporation, which in turn is a wholly-owned direct subsidiary of General Electric Company. EFS Desert Sun, LLC holds a 25 percent direct ownership interest in Desert Investment. *Id.* at 3.

³ Summit Solar Desert Sunlight, LLC is a wholly-owned indirect subsidiary of Sumitomo Corporation, a corporation formed under the laws of Japan. Summit Solar Desert Sunlight, LLC holds a 25 percent direct ownership interest in Desert Investment. *Id.* at 3.

⁴ The Red Bluff bus is located near Desert Center, California and loops in the Devers-Colorado River No. 1 500 kV transmission line.

⁵ Desert Sunlight Transmittal Letter at 3.

⁶ 16 U.S.C. § 824d (2006).

⁷ *Id.* at 4.

⁸ *Id.*

arrange wholesale metering of their individual generating facilities.⁹ Section 4.15 of the Shared Facilities Agreement reflects that both Desert 250 and Desert 300 may be required to file an OATT to allow third parties to use all or a portion of the Shared Facilities.¹⁰

6. Desert Sunlight requests, pursuant to section 35.11 of the Commission's regulations, waiver of the Commission's 60-day notice requirements to allow an effective date of September 20, 2013, one day after the tariff was filed with the Commission.¹¹ According to Desert Sunlight, the Shared Facilities Agreement is submitted in accordance with agreements reached with the Department of Energy (DOE) under the DOE's loan guarantee program. Desert Sunlight states that the projects currently are under construction and obtaining the Commission's order accepting the Shared Facilities Agreement is a condition to Desert Sunlight receiving additional construction funding from the lenders. In order to facilitate meeting these requirements, Desert Sunlight requests that the Commission waive the 60-day notice provision.¹²

7. In addition to filing the Shared Facilities Agreement, Desert Sunlight requests waiver of the requirements of Order Nos. 888¹³ and 890¹⁴ to file an OATT, the

⁹ *Id.* at section 4.6.

¹⁰ *Id.* at section 4.15.

¹¹ 18 C.F.R. § 35.11 (2013).

¹² Desert Sunlight Transmittal Letter at 8.

¹³ *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) (Order No. 888).

¹⁴ *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 No. 890).

requirement of Order No. 889¹⁵ to establish an OASIS, and the Standards of Conduct under Part 358¹⁶ of the Commission's regulations.¹⁷

8. Desert Sunlight contends that good cause exists for the Commission to grant the requested waivers. According to Desert Sunlight, the Shared Facilities are not an integrated component of any electricity grid and were designed solely to enable both Desert 250 and Desert 300 to transmit the power from their facilities to the grid. Furthermore, Desert Sunlight argues that it would be burdensome for Desert 250 and Desert 300, either individually or collectively, to file an OATT or to establish an OASIS under these circumstances. Desert Sunlight adds that the facilities are limited and discrete. Finally, Desert Sunlight notes that the Commission's practice is to grant waiver to small utilities (4 million MWh annually) and explains that this application satisfies that criteria, since the maximum amount of energy that could be transmitted annually from both the Desert 250 and the Desert 300 generating facilities would be approximately 1.35 million MWh each annually.¹⁸

¹⁵ *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) (Order No. 889).

¹⁶ 18 C.F.R. Part 358 (2012). *See also 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); *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) (Order No. 2004); *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), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011) (Order No. 717).

¹⁷ *Id.*

¹⁸ *Id.* n. 11 (While Desert 250 could transmit approximately 2.19 million MWh annually and Desert 300 could transmit 2.63 million MWh annually, each facility is an

(continued...)

II. Notice of Filings and Responsive Pleadings

9. Notice of Desert Sunlight's filing was published in the *Federal Register*, 78 Fed. Reg. 59,662 (2013), with interventions and protests due on or before October 10, 2013. None was filed.

III. Discussion

10. The Shared Facilities 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 Shared Facilities Agreement, effective September 20, 2013, as requested.¹⁹

11. Order Nos. 888 and 890 and section 35.28 of the Commission's regulations require public utilities to file an OATT before providing transmission service. Order No. 889 and Parts 37 and 358 of the Commission's regulations require public utilities to establish an OASIS and abide by certain standards of conduct. In prior orders, the Commission has set forth the standards for waiver of, or exemption from, some or all of the requirements of Order Nos. 888 and 889.²⁰ The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and Order No. 2004 are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.²¹ Order No. 717 did not change those criteria.²²

12. The Commission may grant requests for waiver 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. If the public

intermittent photovoltaic solar facility projected to have a capacity factor of approximately 28 percent, or 1.35 million MWh annually).

¹⁹ See *Central Hudson Gas & Electric Co.*, 60 FERC ¶ 61,106, at 61,339, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

²⁰ 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*).

²¹ See *Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007).

²² See *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280, at PP 32-34 (2008).

utility receives 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.²³

13. The Commission has also determined that waiver of Order No. 889 is appropriate for a public utility under the following circumstances: (1) the applicant owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) 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 a waiver would not be justified.²⁴ In addition, the Commission grants waivers to small public utilities based on the criterion that they dispose of no more than 4 million MWh annually.²⁵ Moreover, the Commission has held that a 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).²⁶

14. Based on the statements in Desert Sunlight's filing, we find that the transmission facilities at issue are limited and discrete. The Shared Facilities will be utilized solely to facilitate the transmission of power from the Desert 250 facility and the Desert 300 facility to the transmission system of SoCal Edison. Accordingly, we will grant Desert Sunlight's request for waiver of the requirements of Order Nos. 888, 890 and section 35.28 of the Commission's regulations to have an OATT on file.

²³ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

²⁴ *Id.* 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 the 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.

²⁵ *See Wolverine Power Supply Coop., Inc.*, 127 FERC ¶ 61,159, at P 15 (2009).

²⁶ *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).

15. However, if either Desert 250 or Desert 300 receives a request for transmission service from a non-affiliate, it must file with the Commission a *pro forma* OATT 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, in compliance with Order Nos. 888 and 890.

16. The Commission will also grant Desert Sunlight's request for waiver of the requirements of Order No. 889 and Part 37 of the Commission's regulations with respect to establishing an OASIS, and Order No. 889 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.²⁷ Similarly, Desert Sunlight's request for waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that either Desert 250 or Desert 300 has unfairly used its access to information to benefit itself or its affiliate.²⁸

The Commission orders:

(A) The Shared Facilities Agreement is hereby accepted for filing, effective September 20, 2013, as discussed in the body of this order.

(B) Desert Sunlight's 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

²⁷ See *supra* n.28.

²⁸ *Id.* Desert 250 or Desert 300 must notify the Commission if there is a material change in facts that affects the 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).

establish and maintain an OASIS, and the requirements under Order Nos. 889 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)

Nathaniel J. Davis, Sr.,
Deputy Secretary.