

147 FERC ¶ 61,082
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Electric Energy, Inc.

Docket No. ER14-1291-000

ORDER GRANTING WAIVER OF ORDER NO. 764 REQUIREMENTS

(Issued April 30, 2014)

1. On February 7, 2014, Electric Energy, Inc. (Electric Energy) filed a request for waiver of the requirements of Order No. 764,¹ to modify its Open Access Transmission Tariff (OATT) and its Large Generator Interconnection Agreement (LGIA), until such time as Electric Energy receives a request for transmission service.² For the reasons described below, we will grant Electric Energy's request.

I. Background

2. On June 22, 2012, the Commission issued Order No. 764, which requires each public utility transmission provider to (1) offer intra-hourly transmission scheduling at 15-minute intervals; and (2) incorporate provisions into the *pro forma* LGIA requiring interconnection customers whose generating facilities are variable energy resources

¹ *Integration of Variable Energy Resources*, Order No. 764, FERC Stats. & Regs. ¶ 31,331, *order on reh'g and clarification*, Order No. 764-A, 141 FERC ¶ 61,232 (2012), *order on clarification and reh'g*, Order No. 764-B, 144 FERC ¶ 61,222 (2013).

² It appears that contrary to the requirements of section 35.28(c)(1)(ii) of the Commission's regulations (18 C.F.R. § 35.28(c)(1)(ii)(2013)), Electric Energy failed to make its Order No. 764 compliance filing in a timely manner. Electric Energy is reminded that it must submit required filings on a timely basis or face possible sanctions by the Commission.

(VER)³ to provide meteorological and forced outage data to the public utility transmission provider for the purpose of power production forecasting. The Commission also provided guidance regarding the development and evaluation of proposals related to recovering the costs of regulation reserves associated with VER integration.⁴

3. The reforms adopted in Order No. 764 were designed to remove barriers to the integration of VERs and to ensure that the rates, terms, and conditions for Commission-jurisdictional services provided by public utility transmission providers are just and reasonable and not unduly discriminatory or preferential.⁵ Upon noting the increasing number of VERs being brought online, the Commission found that reforms were needed to ensure that transmission customers are not exposed to excessive or unduly discriminatory charges, and that public utility transmission providers have the information needed to efficiently manage reserve-related costs.

4. In Order No. 764, the Commission amended the *pro forma* OATT to provide all transmission customers the option of using more frequent transmission scheduling intervals within each operating hour, at 15-minute intervals.⁶ The Commission found transmission customers' inability to adjust their transmission schedules within the hour to reflect changes in generation output can cause charges for Schedule 9 generator imbalance service to be unjust and unreasonable or unduly discriminatory. Thus, this reform was designed to allow transmission customers the flexibility to adjust their transmission schedules, in advance of real-time, to reflect the variability of output in generation, more accurate power production forecasts, and other changes in load profiles and system conditions.⁷ It was also designed to allow public utility transmission providers, over time, to use fewer reserves to maintain overall system balance.⁸ Finally, the Commission implemented this reform to ensure that charges for generator imbalance service under Schedule 9 of the *pro forma* OATT and for other ancillary services through

³ Order No. 764 defined a VER as a device for the production of electricity that is characterized by an energy source that: (1) is renewable; (2) cannot be stored by the facility owner or operator; and (3) has variability that is beyond the control of the facility owner or operator. Order No. 764, FERC Stats. & Regs. ¶ 31,331 at P 210.

⁴ *Id.* P 4.

⁵ *Id.* P 1.

⁶ *Id.* P 91.

⁷ *Id.* P 92.

⁸ *Id.* P 95.

which reserve-related costs are recovered are just and reasonable and are not unduly discriminatory.

5. The Commission also amended the *pro forma* LGIA to require new interconnection customers whose generating facilities are VERs to provide meteorological and forced outage data to the public utility transmission provider with which the customer is interconnected.⁹ Such data would only be required where it is necessary for that public utility transmission provider to develop and deploy power production forecasting. This reform was designed to facilitate public utility transmission providers' use of power production forecasts, which the Commission found can provide public utility transmission providers with advanced knowledge of system conditions needed to manage the variability of VER generation through the unit commitment and dispatch process, rather than through the deployment of more costly reserve service, such as regulation reserves. In requiring this change to the *pro forma* LGIA, the Commission specified that reporting requirements for meteorological and forced outage data would be set forth in Appendix C, Interconnection details of an LGIA, as they may change from time to time.¹⁰ The Commission declined to modify existing LGIAs or to require changes to the *pro forma* OATT,¹¹ upon finding that such changes would, in effect, impose the data reporting requirements on existing interconnection customers, including small generator interconnection customers, retroactively.¹²

6. On December 20, 2012, the Commission issued Order No. 764-A, largely affirming the reforms adopted in Order No. 764. Among other things, Order No. 764-A extended the deadline for compliance with Order No. 764 to November 12, 2013.¹³ On September 19, 2013, the Commission issued Order No. 764-B, which granted in part and denied in part the requests for clarification and denied the requests for rehearing of the Commission's determinations in Order No. 764-A.¹⁴

⁹ *Id.* P 3.

¹⁰ *Id.* P 193.

¹¹ *Id.* P 195.

¹² *Id.* P 196.

¹³ Order No. 764-A, 141 FERC ¶ 61,232 at P 8.

¹⁴ Order No. 764-B, 144 FERC ¶ 61,222.

II. Electric Energy's Filing

7. Electric Energy states that it owns and operates coal and natural gas-fired generating units, located in Joppa, Illinois, with a combined capacity of approximately 1,167 MW (Joppa Facility).¹⁵ Electric Energy explains that the Joppa Facility includes two 75 MW natural gas turbines, owned and operated by Electric Energy's wholly-owned subsidiary, Midwest Electric Power, Inc. (Midwest Electric), which sells the power from these turbines to Electric Energy, for resale. Electric Energy states that it was formed to provide electric energy to a uranium enrichment plant, owned and operated by the U.S. Enrichment Corporation, and located near Paducah, Kentucky (Paducah Plant).¹⁶ As described by Electric Energy, on December 2, 2013, a wholly-owned subsidiary of Dynegy, Inc. acquired the equity interests owned by Ameren Corporation in various public utilities, including Electric Energy. Accordingly, Electric Energy states that it is now owned 80 percent by a wholly-owned subsidiary of Dynegy, Inc. and 20 percent by Kentucky Utilities.¹⁷

8. Electric Energy states that its transmission facilities also include the switchyard located at the Joppa Facility (Joppa Bus) and six 161-kV transmission lines, each approximately eight miles long, that interconnect the Joppa Facility with the U.S. Department of Energy's transmission bus (DOE Bus) at the Paducah Plant. Electric Energy characterizes its transmission system as a radial feed between the Joppa Bus and the DOE Bus.¹⁸

9. In addition, Electric Energy states that its transmission lines connect at the Joppa Bus to the transmission system operated by Midcontinent Independent System Operator, Inc. (MISO), and at the DOE Bus to the balancing authority areas of Tennessee Valley Authority and Louisville Gas and Electric Company/Kentucky Utilities. Electric Energy also states that there are currently no wholesale or retail electric loads within its balancing authority area, and that it is incapable of providing network integration transmission service.¹⁹

¹⁵ Electric Energy February 7, 2014 Filing (February Filing) at 2.

¹⁶ Electric Energy states that it is an exempt wholesale generator and that it has been granted market-based rate authority. *Id.* (citing *Electric Energy, Inc.*, 92 FERC ¶ 62,079 (2000); *Electric Energy, Inc.*, 113 FERC ¶ 61,245 (2005)).

¹⁷ *Id.* at 4.

¹⁸ *Id.* at 2-3.

¹⁹ *Id.* at 5.

10. As justification for its request for waiver of the requirements of Order No. 764, Electric Energy states that, while the Commission did not grant its request for waiver of the requirements of Order No. 888,²⁰ the Commission granted Electric Energy's request for waiver of the requirements of Order No. 889,²¹ including the requirement to establish an Open Access Same-Time Information System.²² Electric Energy also states that the Commission exempted it from the requirements of Order No. 1000,²³ finding that Electric Energy controls limited and discrete transmission facilities that do not form an integrated transmission grid.²⁴

11. Electric Energy explains that historically, other than itself, the only entities to use its transmission lines were its prior owners and their affiliates, and adds that it has never received a request for transmission service since filing its OATT with the Commission, in 1997.²⁵ Electric Energy states that it currently does not have any transmission customers

²⁰ *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).

²¹ *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).

²² February Filing at 3 (citing *Northern States Power Co.*, 76 FERC ¶ 61,250, at 62,298-97 (1996), *reh'g granted for specific utilities sub nom. Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232 (1996) (*Black Creek*)).

²³ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

²⁴ February Filing at 4 (citing *Electric Energy, Inc.*, 144 FERC ¶ 61,028, at P 9 (2013)).

²⁵ *Id.* at 6. Electric Energy acknowledges that it received inquiries from non-affiliated entities regarding transmission service, but that no inquiries matured into requests for transmission service.

and, therefore, its request for waiver will not result in harm to any party. Additionally, Electric Energy explains that its transmission system is used solely for the transmission of power from the Joppa Facility and for power that its subsidiary Midwest Electric sells to Electric Energy for resale.²⁶ Electric Energy states that, to the extent its request for waiver is granted, it commits to make a compliance filing modifying its OATT and LGIA within 60 days of receiving a request for transmission service. It asks to be relieved of the time and expense required to modify an OATT and LGIA that no party is currently utilizing.²⁷

III. Notice and Responsive Pleadings

12. Notice of Electric Energy's filing was published in the Federal Register, 79 Fed. Reg. 9461 (2014), with interventions and protests due on or before February 28, 2014. None was filed.

IV. Discussion

13. In Order No. 764, the Commission stated that the criteria for waiver of the requirements of the Final Rule are unchanged from those used to evaluate requests for waiver under Order Nos. 888, 889, and 890.²⁸ The Commission stated that waiver requests would be evaluated in separate proceedings based on the facts and circumstances of each request.²⁹

14. In *Black Creek*,³⁰ the Commission stated that it would grant requests for waiver of Order No. 888 by public utilities that could show that they own, operate, or control only limited and discrete transmission facilities (i.e., 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 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. The Commission also explained that waiver of Order No. 889 would

²⁶ *Id.*

²⁷ *Id.* at 7.

²⁸ Order No. 764, FERC Stats. & Regs. ¶ 31,331 at P 384, n.365.

²⁹ *Id.* P 151.

³⁰ *Black Creek*, 77 FERC at 61,941.

be appropriate if the applicant owns, operates, or controls only limited and discrete transmission facilities.³¹

15. We will grant Electric Energy's requests for waiver of the requirements of Order No. 764.³² Specifically, we find that waiver of Order No. 764's requirements is warranted based on the representations that Electric Energy's transmission facilities are limited and discrete. Electric Energy's transmission system is primarily radial and not currently used to provide transmission service to non-affiliated third parties. Additionally, Electric Energy has no wholesale or retail loads within its balancing authority area and is incapable of providing network integration transmission service. In light of these representations and the circumstances presented, we grant Electric Energy's request for waiver.³³

The Commission orders:

Electric Energy's request for waiver of the requirements of Order No. 764 is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³¹ *Id.*

³² Electric Energy requests waiver only of the requirements of Order No. 764, and not the underlying requirement to have an OATT on file.

³³ While we grant the request for waiver, we remind Electric Energy that it must make a compliance filing modifying its OATT and LGIA to conform with Order No. 764 within 60 days of receiving a request for transmission service. *See, e.g., Alcoa Power Generating, Inc.*, 145 FERC ¶ 61,201, at P 10 (2013).