

148 FERC ¶ 61,155
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

CED White River Solar, LLC

Docket No. ER14-2051-000

ORDER ACCEPTING COMMON FACILITIES AGREEMENT
AND GRANTING WAIVERS

(Issued September 9, 2014)

1. On May 28, 2014, as amended on July 11, 2014, CED White River Solar, LLC (White River) submitted, pursuant to section 205 of the Federal Power Act,¹ a Co-Tenancy and Common Facilities Agreement (Common Facilities Agreement) with its affiliate, CED White River Solar 2, LLC (White River 2), (collectively, White River Companies) together with a request for certain waivers of requirements to: file an Open Access Transmission Tariff (OATT), comply with the Commission's Standards of Conduct, and establish and maintain an Open Access Same-Time Information System (OASIS) for the common facilities. In this order, the Commission accepts for filing the Common Facilities Agreement, effective April 28, 2014, as requested, and grants White River's requests for waiver.

¹ 16 U.S.C. § 824d (2012).

I. Background

2. White River owns and operates the White River Facility, a 20 MW solar generating facility located in White River, Tulare County, California. The White River Facility is interconnected to transmission facilities owned by Pacific Gas and Electric Company (PG&E) and operated by the California Independent System Operator Corporation (CAISO). White River states that it sells all of the electrical output of the White River Facility to PG&E pursuant to a long-term power purchase agreement.²

3. White River 2 is constructing and will own and operate the White River 2 Facility, a 20 MW solar generating facility located in Alpaugh, Tulare County, California. The White River 2 Facility will also be interconnected to transmission facilities owned by PG&E and operated by CAISO. White River states that White River 2 also intends to sell all of the electrical output of the White River 2 Facility to PG&E pursuant to a long-term power purchase agreement.

4. White River and White River 2 are parties to a Non-Exclusive Easement, which governs the operation and maintenance of certain electrical facilities along and within the premises shared by the parties (Shared Premises).³ White River states that it has constructed certain common facilities on the Shared Premises that will be used in connection with the White River Companies' respective projects. White River states that these common facilities will hold the utility generation-tie line and disconnect switches for the respective projects.⁴

² White River Transmittal Letter at 2.

³ Common Facilities Agreement at § 3.3.

⁴ The common facilities are described as follows:

The deadend structure is a two pole structure, approximately 75 feet tall, with each pole spaced at 40 feet from each other's center. The structure supports two deadend support cross arms each dedicated to a Project. The lower deadend cross arm is mounted 40 feet above the ground and holds the utility [generation] tie, disconnect switch, and the customer [generation] tie for the [White River 2 Facility]. The top deadend cross arm is 60 feet from the ground and holds vertical jumper from the utility [generation] tie to a second disconnect switch dedicated to [the White River Facility].

White River Transmittal Letter at 3 and Common Facilities Agreement at Exhibit A-1.

II. Instant Filing

A. Common Facilities Agreement

5. The Common Facilities Agreement will govern the rights, obligations, joint ownership and use of the common facilities currently owned by White River. Pursuant to Article 3 of the Common Facilities Agreement, White River will assign and transfer to White River 2 an undivided interest in the common facilities, effective as of the later of the construction start date of the White River 2 Facility (which as noted above has already begun) or the effective date of the Common Facilities Agreement. White River requests this agreement become effective on April 28, 2014, the date the substation was energized.

6. Under the Common Facilities Agreement, the costs of operating and maintaining the common facilities will be allocated based on each White River Companies' ownership percentage of the facilities. The costs of the common facilities will be shared based on each owner's pro-rata ownership interests. White River states that the Common Facilities Agreement provides for the pass-through of actual costs based on each owner's pro-rata ownership interests, and asserts that the terms are consistent with those typically included in joint ownership or shared facility agreements previously accepted by the Commission.⁵ In addition, if either company incurs costs in connection with activities of the other, then the company incurring such cost shall be reimbursed.⁶ White River explains that the White River Companies intend to seek mutual economic benefits by jointly bearing the cost of certain shared expenses.

7. On July 11, 2014, White River submitted a supplemental filing to provide additional technical information that describes the size and layout of the common facilities. Based on White River's representations of the common facilities, the generation-tie lines, from White River 1 and White River 2 to their respective disconnect switch poles, are each rated at 127 MVA.⁷ White River requests confidential treatment

⁵ White River Transmittal Letter at 3 (citing *AmerGen Vermont LLC*, 90 FERC ¶ 61,307 (2000); *Alpaugh 50, LLC and Alpaugh North, LLC*), 142 FERC ¶ 61,112 (2013) (*Alpaugh*); *Hardee Power Partners Ltd.*, 125 FERC ¶ 61,036 (2008) (*Hardee 2008 Order*)).

⁶ *Id.* at 3-4.

⁷ White River Supplemental Filing at Exhibit 5.

of Exhibits 1-3 and Exhibit 6 of its supplemental filing in accordance with 18 C.F.R. § 388.112 (2014).⁸

B. Waiver Requests

8. The White River Companies request that the Commission waive the requirements under Order Nos. 888⁹ and 890¹⁰ and section 35.28 of the Commission's regulations¹¹ to file an OATT, the requirements under Order No. 889¹² and Part 37 of the Commission's regulations¹³ to establish an OASIS, and the requirements under Order No. 889 and Part 358 of the Commission's regulations¹⁴ to comply with the Standards of Conduct. White River states that the common facilities constitute limited and discrete facilities constructed for the purpose of delivering the output of the White River Companies' solar generation facilities to PG&E's transmission system. White River contends that the common facilities are the type of limited and discrete facilities for

⁸ *Id.* at 2-3.

⁹ *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).

¹⁰ *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).

¹¹ 18 C.F.R. § 35.28 (2014).

¹² *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).

¹³ 18 C.F.R. pt. 37 (2014).

¹⁴ 18 C.F.R. pt. 358 (2014).

which the Commission routinely grants waiver of its open access requirements unless and until the owner of such facilities receives a request for transmission service.¹⁵

9. White River also requests waiver of the requirement under section 35.28(d) of the Commission's regulations to submit a request for Open Access Waivers no later than 60 days prior to the time that they would otherwise be required to comply with such requirement.¹⁶ White River explains that good cause for waiver is appropriate as such waivers are for limited and discrete facilities.

10. Finally, White River requests waiver of the requirement in section 35.12(b)(1) of the Commission's regulations,¹⁷ which requires companies to provide an estimate of transactions and revenues. White River contends that because the Common Facilities Agreement provides that the White River Companies will share actual costs on the basis of their pro-rata ownership interests in the common facilities, no estimate of transactions and revenues are necessary.¹⁸

III. Notice of Filings

11. Notice of White River's May 28, 2014 filing was published in the *Federal Register*, 79 Fed. Reg. 32,270 (2014), with motions to intervene, comments, and protests due on or before June 18, 2014. None were filed. Notice of White River's July 11, 2014 filing was published in the *Federal Register*, 79 Fed. Reg. 42,783 (2014), with motions to intervene, comments, and protests due on or before August 1, 2014. None were filed.

¹⁵ White River Transmittal Letter at 5 and n. 16 (citing *Black Creek Hydro Inc.*, 77 FERC ¶ 61,232, at 61,940-41 (2006); *Alpaugh*, 142 FERC ¶ 61,112 at PP 16-17. See also *Hardee Power Partners Ltd.*, 114 FERC ¶ 61,131, at PP 13 and 16 (2006); Hardee 2008 Order, *supra* n.5; *Wolverine Creek Goshen Interconnection, LLC, et al.*, Docket No. ER06-267-000, *et al.* (Jan.13, 2006) (delegated letter order); *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 24 (2005).

¹⁶ 18 C.F.R. § 35.28(d) (2014). Although White River requested waiver of section 35.28(d)(2), it appears it intended to seek waiver of section 35.28(d).

¹⁷ 18 C.F.R. § 35.12(b)(1) (2014).

¹⁸ White River Transmittal Letter at 4.

IV. Discussion

A. Common Facilities Agreement

12. We find that the Common Facilities Agreement appears to be just and reasonable and has not been shown to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore we will accept it for filing, effective April 28, 2014, as requested.¹⁹

B. Waiver Requests

13. Order Nos. 888 and 890 and section 35.28 of the Commission's regulations 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 regulations require public utilities to establish an OASIS. Order Nos. 889, 2004,²⁰ and 717,²¹ and Part 358 of the Commission's regulations require public utilities to abide by certain Standards of Conduct.²² In prior orders, the Commission has enunciated the standards for waiver of,

¹⁹ See *Central Hudson Gas & Electric Corp., et al.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

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).

²¹ *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).

²² 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; 18 C.F.R. pt. 358 (2014).

or exemption from, some or all of the requirements of Order Nos. 888, 889, and 890.²³ The Commission has stated that the criteria for waiver of the requirements of Order Nos. 890 and 2004 are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.²⁴ Order No. 717 did not change those criteria.²⁵

14. The Commission has granted requests for waiver of the obligation to file an OATT to public utilities that show 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 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.²⁶

15. The Commission has also 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.²⁷ The Commission has held that waiver of Order No. 889 will remain in effect until the Commission takes action in response to a complaint that an entity evaluating its transmission needs could not get the information to complete its evaluation (for OASIS waivers), or until an entity complains that the public utility has unfairly used its access to

²³ 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*).

²⁴ 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).

²⁵ See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

²⁶ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

²⁷ *Id.* Although the Commission originally precluded waiver of the requirements for OASIS and the Standards of Conduct for a small public utility that was 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. Moreover, *Black Hills* did not affect waivers based on a public utility disposing of no more than 4 million megawatt hours annually.

transmission information to benefit the utility of its affiliate (for Standards of Conduct waivers).²⁸

16. Our review indicates that the common facilities include a generator tie line and disconnect switches which will be used to connect the solar generating units to PG&E's transmission system. We find that the capacity on the common facilities is approximately six times greater than the amount needed to support two 20 MW solar generating units.²⁹ Although excess capacity exists on the generator tie line, White River Companies does not, in the instant filing, set forth any plans to use this excess capacity.

17. Based on White River's representations, we find the common facilities are limited and discrete and do not constitute an integrated transmission system for purposes of the waiver analysis considered in this order. The generator tie line will deliver power from the affiliated White River Companies' respective 20 MW solar projects to PG&E's transmission system. Accordingly, we will grant White River's request for waiver of the requirements set forth in Order Nos. 888 and 890 and section 35.28 of the Commission's regulations to have an OATT on file. However, if White River 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.³⁰

18. The Commission also will grant White River's request 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 and Part 358, with respect to the Standards of Conduct. We note that White River's waiver of the requirements to establish an OASIS will remain in effect until the Commission takes action in response to a complaint that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation.³¹ Likewise, White River's waiver of the Standards of Conduct will remain in

²⁸ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997) (*Central Minnesota*)); *Easton Utilities Commission*, 83 FERC ¶ 61,334, at 62,343 (1998) (*Easton*).

²⁹ White River Supplemental Filing at Exhibit 5.

³⁰ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

³¹ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota*, 79 FERC ¶ 61,260 at 62,127; *Easton*, 83 FERC ¶ 61,334 at 62,343).

effect unless and until the Commission takes action on a complaint that White River has used its access to information to unfairly benefit itself or its affiliate.³²

19. Finally, we will grant White River's request for waiver of section 35.12(b)(1) of the Commission's regulations because White River will not assess charges to White River 2 under the Common Facilities Agreement.

The Commission orders:

(A) The Common Facilities Agreement between White River and White River 2 is hereby accepted for filing, effective April 28, 2014, as requested, as discussed in the body of this order.

(B) White River's request for waiver of the requirements to file an OATT, maintain an OASIS, and comply with the Standards of Conduct is hereby granted, as discussed in the body of this order.

(C) White River's request for waiver of section 35.12(b) 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.

³² *Id.* White River must notify the Commission if there is a material change in facts that affect its waiver within 30 date 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).