

149 FERC ¶ 61,052  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Energia Sierra Juarez U.S. Transmission, LLC

Docket No. ER14-2680-000

ORDER ACCEPTING FACILITIES AGREEMENT AND GRANTING IN PART AND  
DENYING IN PART REQUESTS FOR WAIVERS

(Issued October 17, 2014)

1. In this order, the Commission accepts the Facilities Agreement submitted pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup> by Energia Sierra Juarez U.S. Transmission, LLC (Energia), between Energia and its affiliate Energia Sierra Juarez U.S., LLC (ESJ US). The Facilities Agreement is accepted effective October 20, 2014, as requested. Energia's requests for waiver and blanket authorization are granted in part and denied in part as discussed in the body of this order.

**I. Background and Facilities Agreement**

2. Energia is a wholly owned direct subsidiary of ESJ US, which in turn is a wholly owned direct subsidiary of Energia Sierra Juarez, s. de R.L. de C.V. (ESJ Mexico). ESJ Mexico is an affiliate of San Diego Gas & Electric Co. (SDG&E) through their joint affiliation with Sempra Energy, a public utility holding company. Energia will own and operate a 230 kV radial generator-tie line (Energia Gen-Tie) less than one mile in length, currently under construction, which will be used to deliver power to the California Independent System Operator Corporation (CAISO) controlled grid from a wind generation facility (Energia Facility) under construction in northern Mexico by ESJ Mexico. The Energia Facility will have a generating capability of 156 MW, all of which will be sold to SDG&E pursuant to a long-term power purchase agreement.<sup>2</sup>

3. The combined project, comprised of the Energia Facility and the Energia Gen-Tie, is a cross border project, delivering electric power from Mexico into CAISO. Thus,

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> Transmittal at 2.

Energia states that ownership must be bifurcated between United States and Mexico legal entities. ESJ Mexico will own the Energia Facility in Mexico, which will consist of wind turbines, interconnection facilities, and a radial generator tie line from the collector station to the U.S.-Mexico border. At the point where the generator tie line crosses the border, the generator tie line ownership shifts to Energia and becomes the Energia Gen-Tie.<sup>3</sup> At the border, ESJ US will take control of the title of the power and use the Energia Gen-Tie to deliver power into the CAISO balancing authority area to SDG&E.

4. Energia states that the Facilities Agreement governs the terms and conditions under which Energia permits ESJ US to make use of the Energia Gen-Tie to deliver the output of the Energia Facility to the CAISO balancing authority area. ESJ US will pay Energia's expenses without markup, but there will otherwise be no charges for ESJ US to use the Energia Gen-Tie.

## **II. Request for Acceptance and Waivers**

5. Energia requests that the Commission accept the Facilities Agreement, stating that its terms and conditions are consistent with similar agreements associated with the use of generator interconnection facilities, which the Commission has accepted for filing. Energia requests an effective date of October 20, 2014.<sup>4</sup>

### **A. Waivers Applicable to Transmission Providers**

6. Energia also requests certain waivers of certain requirements applicable to transmission providers. Specifically Energia requests waiver of: (1) the requirements of Order No. 888,<sup>5</sup> Order No. 890,<sup>6</sup> and section 35.28 of the Commission's

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<sup>3</sup> *Id.* at 2-3.

<sup>4</sup> *Id.* at 5.

<sup>5</sup> *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 (1997), *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).

<sup>6</sup> *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, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

regulations<sup>7</sup> that a public utility owning, operating, or controlling transmission facilities have an open access transmission tariff (OATT) on file; (2) the requirements of Order No. 889<sup>8</sup> and Part 37 of the Commission's regulations<sup>9</sup> that a public utility owning, operating, or controlling facilities used for the transmission of electric energy in interstate commerce establish and maintain an open access same time information system (OASIS); and (3) the requirements of Order Nos. 889 and 2004,<sup>10</sup> Order No. 717,<sup>11</sup> and Part 358 of the Commission's regulations<sup>12</sup> relating to the Standards of Conduct for transmission providers.

7. Energia argues that the Commission has waived the obligations to file an OATT when applicants show they only own a discrete transmission facility and do not form an integrated transmission grid. Additionally, Energia argues that the Commission has waived the requirements to abide by the Standards of Conduct and maintain an OASIS for applicants that own, operate, or control a limited and discrete transmission facility or are small public utilities that own, operate, or control an integrated transmission grid but dispose of no more than 4 million megawatt hours (MWh) annually.

8. Energia argues that, because the Energia Gen-Tie is less than a mile in length, it does not comprise an integrated transmission system, nor is it designed to serve other customers. Energia argues that it should not be denied waiver based on its status as an

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<sup>7</sup> 18 C.F.R. § 35.28 (2014).

<sup>8</sup> *Open Access Same-Time Information System (Formerly Real-Time Information Networks) 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).

<sup>9</sup> 18 C.F.R. pt. 37 (2014).

<sup>10</sup> *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 in part and remanded in part not relevant sub nom. National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006).

<sup>11</sup> *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280, at PP 123, 129 (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).

<sup>12</sup> 18 C.F.R. pt. 358 (2014).

affiliate of SDG&E through Sempra Energy. Energia also notes that the Commission has approved similar requests for waivers from affiliates based on the limited and discrete nature of the facility. Energia argues that even if the Commission determined that its facilities could not be considered limited and discrete, it would satisfy the alternative criteria of being a small public utility that disposes of less than 4 million MWh annually.

**B. Waivers Applicable to Market-Based Rate Entities**

9. Energia also requests certain waivers applicable to market-based rate entities. Specifically Energia requests: (1) waiver of Parts 41, 101, and 141, of the Commission's accounting and periodic reporting regulations, except as to sections 141.14 and 141.15;<sup>13</sup> (2) waiver of subparts B and C of Part 35 of the Commission's regulations, except as to sections 35.12(a), 35.13(b), 35.15, and 35.16;<sup>14</sup> and (3) blanket approval under section 204 of the FPA and Part 34 of the Commission's regulations<sup>15</sup> for all future issuances of securities and assumptions of liability.<sup>16</sup>

10. Energia states that these are the same blanket approvals and waivers usually granted to entities permitted to sell electricity at market-based rates. Energia distinguishes its application here from *Maine GenLead, LLC*, in which the Commission recently denied a request for waiver of Subparts B and C of Part 35 by Maine GenLead, LLC (Maine GenLead) based on a finding that the applicant had provided insufficient information regarding how it would establish its rates.<sup>17</sup> Energia notes that it has provided a clear description of the direct pass through expenses to be paid by ESJ US to Energia. Energia notes that, as defined by section 1.1(m) of the Facilities Agreement, this includes all expenses incurred by or on behalf of Energia in connection with the Energia Gen-Tie.

11. Energia notes that the blanket authorization requested for section 204 of the FPA and Part 34 of the Commission's regulations was also denied to Maine GenLead. Energia states that, in that case, Maine GenLead was affiliated with Evergreen II Wind Power, LLC (Evergreen II), the entity using the Maine GenLead interconnection facilities to deliver its power to the grid. Energia notes that Evergreen II did not have market-

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<sup>13</sup> 18 C.F.R. pts. 41, 101, 141 (2014). Section 141.14 of the Commission's regulations addresses Form No. 80, the Licensed Hydropower Development Recreation Report, and section 141.15 addresses the annual conveyance report applicable to hydropower licensees.

<sup>14</sup> 18 C.F.R. pt. 35 (2014).

<sup>15</sup> 16 U.S.C. § 824c (2012); 18 C.F.R. pt. 34 (2014).

<sup>16</sup> Transmittal at 9.

<sup>17</sup> *Maine GenLead, LLC*, 146 FERC ¶ 61,223 (2014)(*Maine GenLead*).

based rate authority or the associated waivers and blanket authorizations. As distinguished from Maine GenLead's request, Energia notes that it is a direct subsidiary of its analogous affiliate, ESJ US, and notes that ESJ US has been granted blanket authorization under Part 34 to issue securities and assume liabilities in the context of its authority to sell energy, capacity, and ancillary services at market-based rates. Energia argues that as a wholly owned subsidiary of ESJ US, Energia should similarly be granted the requested Part 34 blanket authorization.

### **III. Discussion**

#### **A. Procedural Matters**

12. Notice of the Facilities Agreement and Energia's requested waivers was published in the Federal Register, 79 Fed. Reg. 51,149 (2014), with interventions or protests due on or before September 10, 2014. None was filed.

#### **B. Substantive Matters**

13. The terms and conditions of the Facilities Agreement appear to be just and reasonable and have not been shown to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept the Facilities Agreement, to become effective October 20, 2014, as requested. As discussed below, we also will grant Energia's request for waiver of Order Nos. 888, 889, 890, 2004, and 717 and Part 358 to file an OATT, establish an OASIS, and comply with the Standards of Conduct. We will also grant Energia's request for waiver of Part 101 and Part 141 (with the exception of sections 141.14 and 141.15) of the Commission's regulations. We also will grant waiver of the requirements of sections 41.10 through 41.12, but we will deny waiver of the balance of the requirements of Part 41, and Subparts B and C of Part 35. Furthermore, we will deny Energia's request for blanket authorization of the issuance of securities and assumptions of liability under Part 34.

14. Order Nos. 888 and 890 of the Commission's regulations require public utilities that own, control, or operate facilities used for the transmission of electric energy in interstate commerce to file an OATT. Order No. 889 requires public utilities to establish and maintain an OASIS, and Order Nos. 889, 2004, and 717, and Part 358 of the Commission's regulations require public utilities to abide by certain Standards of Conduct.<sup>18</sup> 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.<sup>19</sup> The Commission has stated that the criteria for waiver of the requirements of Order

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<sup>18</sup> 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.

<sup>19</sup> See, e.g., *Black Creek Hydro Inc., et al.*, 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*); *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 22 (2005) (*Entergy*).

No. 890 and Order No. 2004 are unchanged from those used to evaluate requests for waiver under Order No. 888 and Order No. 889.<sup>20</sup> Order No. 717 did not change those criteria.<sup>21</sup>

15. 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.<sup>22</sup>

16. The Commission has also determined that waiver of the requirement 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 a waiver would not be justified.<sup>23</sup>

17. 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 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).<sup>24</sup>

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<sup>20</sup> 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).

<sup>21</sup> See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

<sup>22</sup> *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

<sup>23</sup> *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) (*Black Hills*), 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 MWh annually.

<sup>24</sup> *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*)).

18. Based on Energia's representations, we find that the Energia Gen-Tie is a limited and discrete facility that does not constitute an integrated transmission system for the purpose of the waiver analysis considered in this order. The Energia Gen-Tie was built exclusively to deliver electric power for Energia and ESJ US from the Energia Facility to SDG&E onto the CAISO controlled grid. Accordingly, we will grant Energia's requests for 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 Energia receives a request for transmission service from someone other than its affiliate ESJ US, it must file with the Commission a *pro forma* OATT within 60 days of the date of the request.<sup>25</sup>

19. The Commission will also grant Energia's request for waiver of Order No. 889 with respect to OASIS and Order Nos. 889, 2004, and 717 and Part 358 with respect to the Standards of Conduct. We note that 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.<sup>26</sup>

20. Consistent with the Commission's precedent in *Maine GenLead*,<sup>27</sup> we will grant, in part, and deny, in part, the waivers of Commission regulations and filing requirements Energia seeks that are typically granted to sellers authorized to sell electricity at market-based rates, as we find similarities in the circumstances the Commission relied upon to reach its determination in *Maine GenLead* and those presented in this proceeding. Thus, we will grant Energia's request for waiver of Part 141 (except for, as requested, sections 141.14 and 141.15), including the Form No. 1 filing requirement. Likewise, we will also grant waiver of Part 101. However, notwithstanding the waiver of the accounting requirements of Part 101, we expect Energia to keep its accounting records in accordance with accounting principles generally accepted in the United States (U.S. GAAP). As to Energia's request for waiver of Part 41, we will grant its request for waiver of sections 41.10 through 41.12, because those sections pertain to Form No. 1 filing requirements in Part 141, which we also waive, as discussed above. However, we will deny Energia's request for waiver of the balance of the requirements of Part 41. These requirements pertain to the Commission's audit process, which remains applicable in this instance.

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<sup>25</sup> *Black Hills*, 77 FERC ¶ 61,232 at 61,941.

<sup>26</sup> *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).

<sup>27</sup> *Maine GenLead, LLC*, 146 FERC ¶ 61,223, at PP 17-20.

This finding is consistent with the Commission's established policy of denying waiver of Part 41 to transmission providers.<sup>28</sup> Consistent with our previous orders, we find that it is appropriate to deny waiver of these provisions to facilitate regulatory oversight.

21. The Commission will deny Energia's requests for waiver of Subparts B and C of Part 35 of the Commission's regulations, as well as Energia's request for blanket authorization under section 204 of the FPA and Part 34 of the Commission's regulations. These requests for waiver and blanket authorization are associated with entities that own generation with the authority to sell electric power at market-based rates, and therefore should be included in applications for market-based rate authority under section 205 of the FPA.<sup>29</sup> We note that Energia's generator affiliate, ESJ US, has received market-based rate authorization, at which time the Commission granted waiver of Subparts B and C of Part 35 of the Commission's regulations, and allowed ESJ US blanket authorization under section 204 of the FPA and Part 34 of the Commission's regulations for future issuances of securities and assumptions of liability.<sup>30</sup>

The Commission orders:

(A) Energia's proposed Facilities Agreement is hereby accepted for filing, effective October 20, 2014, as discussed in the body of this order.

(B) Energia's requests for waiver of the Commission's requirements to file an OATT, maintain an OASIS, and comply with the Standards of Conduct are hereby granted, as discussed in the body of this order.

(C) Energia's request for waiver of the provisions of Subparts B and C of Part 35 of the Commission's regulations is hereby denied, as discussed in the body of this order.

(D) Energia's request for waiver of Part 141 of the Commission's regulations, with the exception of sections 141.14 and 141.15, is hereby granted, as discussed in the body of this order.

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<sup>28</sup> *Rock Island Clean Line LLC*, 139 FERC ¶ 61,142, at P 47 (2012); *TransEnergie U.S. Ltd.*, 98 FERC ¶ 61,147, at 61,457 (2002); *TransEnergie U.S. Ltd. and Hydro One Delivery Services Inc.*, 98 FERC ¶ 61,144, at 61,502 (2002); *Northeast Utilities*, 98 FERC ¶ 61,130 at 62,331; *Neptune Regional Transmission System, LLC*, 96 FERC ¶ 61,147 at ordering para. (G) (2001).

<sup>29</sup> See, e.g., *Maine GenLead*, 146 FERC ¶ 61,223, at PP 19-20.

<sup>30</sup> See *Energia Sierra Juarez U.S., LLC*, Docket No. ER14-1470-000 (unpublished letter order) (June 7, 2012).

(E) Energia's request for waiver of the requirements of Part 41 of the Commission's regulations is hereby granted in part and denied in part, as discussed in the body of this order.

(F) Energia's request for waiver of Part 101 of the Commission's regulations is hereby granted, as discussed in the body of this order.

(G) Energia's request for blanket authorization under section 204 of the FPA and Part 34 of the Commission's regulations is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.