

149 FERC ¶ 61,104
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Beech Ridge Energy LLC	Docket Nos. ER14-2795-000
Beech Ridge Energy II LLC	ER14-2796-000
Beech Ridge Energy Storage LLC	ER14-2797-000

ORDER ACCEPTING ASSIGNMENT, CO-TENANCY AND SHARED FACILITIES
AGREEMENT AND GRANTING WAIVERS

(Issued November 7, 2014)

1. In this order, the Commission accepts the Assignment, Co-Tenancy, and Shared Facilities Agreement (Shared Facilities Agreement) filed by Beech Ridge Energy LLC (Beech Ridge I),¹ Beech Ridge Energy II LLC (Beech Ridge II),² and Beech Ridge Energy Storage LLC (Beech Ridge Storage)³ (collectively, the Filing Parties), effective September 9, 2014, as requested. Further, as discussed below, we grant the Filing Parties' request for a waiver of the requirements to file an Open Access Transmission Tariff (OATT), to comply with the Commission's Standards of Conduct, and to establish and maintain an Open Access Same-Time Information System (OASIS) for the Shared Interconnection Facilities.

I. Background

2. The Filing Parties state that Beech Ridge I owns and operates a wind-powered project located in Greenbrier and Nicholas Counties, West Virginia, with a generating capacity of 100.5 MW (the Beech Ridge I Project). In 2010, the Beech Ridge I Project

¹ Beech Ridge Energy LLC, Rate Schedules and Tariffs, [SFA, FERC Electric Rate Schedule No. 1, 1.0.0](#).

² Beech Ridge Energy II LLC, Rate Schedules and Tariffs, [SFA, FERC Electric Rate Schedule No. 1, 1.0.0](#).

³ Beech Ridge Energy Storage LLC, Rate Schedules and Tariffs, [SFA, FERC Electric Rate Schedule No. 1, 1.0.0](#).

began generating electricity, which it sells through its interconnection with the transmission system owned by Monongahela Power Company, doing business as Allegheny Power, and controlled by PJM Interconnection, L.L.C (PJM). According to the Filing Parties, Beech Ridge I owns the radial electric interconnection facilities needed for Beech Ridge I to make wholesale power sales from the Beech Ridge I Project. These facilities consist of 34.5 kV collection lines and related facilities, a collection line substation, transformers and related disconnect switches, and an approximately 15-mile 138 kV generator-tie line and related facilities that connect to Allegheny Power's transmission system

3. The Filing Parties further explain that Beech Ridge II is developing, and plans to construct, own, and operate, wind generation facilities in Greenbrier and Nicholas Counties, West Virginia, with a generating capacity of up to 52.5 MW (the Beech Ridge II Project). Beech Ridge Storage is also developing, and plans to construct, own, and operate, energy storage devices in Greenbrier and Nicholas Counties, West Virginia, with a capacity of up to 32 MW (the Beech Ridge Storage Project). The Filing Parties state that the Beech Ridge II and Beech Ridge Storage Projects will be interconnected to Allegheny Power's transmission system at the same interconnection point as the Beech Ridge I Project.

4. The Filing Parties also note that the Beech Ridge I Project sells electric energy, capacity, and/or ancillary services at wholesale pursuant to market-based rate authority. The Beech Ridge II and Beech Ridge Storage Projects also plan to operate pursuant to market-based rate authority.⁴

5. On September 8, 2014, the Filing Parties submitted pursuant to section 205 of the Federal Power Act,⁵ the Shared Facilities Agreement at issue, which grants Beech Ridge II and Beech Ridge Storage access to certain interconnection facilities (Shared Interconnection Facilities) owned by Beech Ridge I so that the Beech Ridge II and Beech Ridge Storage Projects can connect to Allegheny Power's transmission system to effectuate their wholesale power and ancillary services sales.⁶ These interconnection

⁴ Beech Ridge II filed with the Commission in Docket Nos. ER14-2798-000 and ER14-2798-000 a request for market-based rates. Beech Ridge Storage filed with the Commission in Docket Nos. ER14-2799-000 and ER14-2799-001 a request for market-based rates.

⁵ 16 U.S.C. § 824d (2012)

⁶ The Shared Facilities Agreement also includes provisions concerning administrative and operation and maintenance services the Filing Parties will receive from Invenergy Services. Invenergy Services is an indirect, wholly-owned subsidiary of

facilities are described by the Filing Parties in Exhibit D to the Shared Facilities Agreement. Exhibit D provides that the Filing Parties will jointly own and/or use certain Shared Interconnection Facilities, while other Shared Interconnection Facilities will be jointly owned and/or used by only Beech Ridge I or Beech Ridge Storage.

6. According to the Filing Parties, the actual costs of operating and maintaining the Shared Interconnection Facilities, and shared real property, will be shared on the basis of the respective Filing Party's pro rata ownership interest in such facilities or property.

7. The Filing Parties also explain that the Shared Facilities Agreement sets forth a Net Revenue Loss Calculation Methodology to be used as the basis for indemnification and reimbursement of losses. A party to the Shared Facilities Agreement will use this methodology if any of its facilities are disconnected or its power deliveries or operations are interrupted or curtailed due to the operation, maintenance, or construction of another Filing Parties' facilities.

8. Lastly, the Filing Parties request that the Commission waive the following: (1) the requirements under Order Nos. 888⁷ and 890⁸ and section 35.28 of the Commission's regulations⁹ to file an OATT for access to the Shared Interconnection Facilities; (2) the

Invenergy Investment Company LLC. The Filing Parties are indirect subsidiaries of Invenergy Wind LLC. Invenergy Investment Company LLC indirectly owns the controlling interests in Invenergy Wind LLC. Beech Ridge Energy LLC, Beech Ridge Energy II LLC, and Beech Ridge Energy Storage LLC September 8, 2014 Filing at 3, 5 n.9 (September 8 Filing).

⁷ *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 Grp. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁸ *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).

⁹ 18 C.F.R. § 35.28 (2014).

requirements under Order No. 889¹⁰ and Part 37 of the Commission's regulations¹¹ to establish an OASIS; and (3) the requirements under Order Nos. 889, 2004,¹² and 717,¹³ and Part 358 of the Commission's regulations¹⁴ to comply with the Standards of Conduct.

II. Notice of Filing

9. Notice of the filing was published in the *Federal Register*, 79 Fed. Reg. 55,446 (2014), with interventions and comments due on or before September 29, 2014. None were filed.

III. Discussion

A. Shared Facilities Agreement

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

¹⁰ *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).

¹¹ 18 C.F.R. pt. 37 (2014).

¹² *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. Nat'l 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).

¹³ *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).

¹⁴ 18 C.F.R. pt. 358 (2014).

unlawful. Accordingly, we accept the proposed Shared Facilities Agreement, effective September 9, 2014, as requested.¹⁵

B. Waiver Requests

11. The Filing Parties request waiver for the Shared Interconnection Facilities of the Commission's open access requirements, namely, to file an OATT, to establish and maintain an OASIS, and to abide by the Standards of Conduct. In support of their request, the Filing Parties state that both the Shared Interconnection Facilities and the collection facilities are limited and discrete and are designed to deliver the output of Beech Ridge I and Beech Ridge II's wind-powered generation facilities and Beech Ridge Storage's energy storage facilities to the PJM transmission system. In addition, the Filing Parties contend that the interconnection facilities do not form an integrated transmission system.

12. 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 Parts 37 and 358 of the Commission's regulations require public utilities to establish an OASIS. Order Nos. 889, 2004, and 717, and Part 358 of the Commission's regulations require public utilities to abide by certain Standards of Conduct.¹⁶ 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 890.¹⁷ The Commission has stated that the criteria for waiver of the requirements of Order Nos. 890 and 2004 have not changed from those used to evaluate requests for waiver under Order Nos. 888 and 889.¹⁸ Order No. 717 did not change those criteria.¹⁹

¹⁵ *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, *order on reh'g*, 61 FERC ¶ 61,089 (1992).

¹⁶ 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.

¹⁷ *See, e.g., Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*); *Entergy Miss., Inc.*, 112 FERC ¶ 61,228, at P 22 (2005) (*Entergy*).

¹⁸ *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).

¹⁹ *See* Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31–33.

13. 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* 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.

14. 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 (other than part of 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.²⁰ 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).²¹ Based on the statements by the Filing Parties, we find that the Shared Interconnection Facilities qualify as limited and discrete facilities that are not part of an integrated transmission grid. Accordingly, we grant the Filing Parties' request for waiver of the requirement to have an OATT on file with respect to those facilities. However, if the Filing Parties receive a request for transmission service, they must file with the Commission a *pro forma* OATT within 60 days of the date of the request.²²

²⁰ *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. Moreover, *Black Hills* did not affect waivers based on a public utility disposing of no more than 4 million MWh annually.

²¹ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Cent. Minn. Mun. Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997) (*Central Minnesota*); *Easton Utils. Comm'n*, 83 FERC ¶ 61,334, at 62,343 (1998) (*Easton*)).

²² *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

15. The Commission also grants the Filing Parties' request for waiver of the requirements to maintain an OASIS and to comply with the Standards of Conduct. We note that the waiver of the requirement to establish an OASIS will remain in effect unless and 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.²³ Likewise, the waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity claiming that the Filing Parties have unfairly used their access to information to unfairly benefit themselves or their affiliates.²⁴

The Commission orders:

(A) The Filing Parties' proposed Shared Facilities Agreement is hereby accepted for filing, effective September 9, 2014, as requested, as discussed in the body of this order.

(B) The Filing Parties' request for waiver of the Commission's requirements to file an OATT, to establish and maintain an OASIS, and to comply with the Standards of Conduct is hereby granted with respect to the Shared Interconnection Facilities, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²³ *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).

²⁴ *Id.* The Filing Parties must notify the Commission if there is a material change in facts that affect 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 ordering para. (A) (2009).