

149 FERC ¶ 61,205  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Palo Duro Wind Interconnection Services, LLC

Docket No. ER15-139-000

ORDER CONDITIONALLY ACCEPTING SHARED FACILITIES AGREEMENT  
AND GRANTING WAIVERS

(Issued December 5, 2014)

1. In this order, the Commission conditionally accepts the Amended and Restated Shared Facilities Agreement (Shared Facilities Agreement) filed by Palo Duro Wind Interconnection Services, LLC (Palo Duro Interconnection) among Palo Duro Interconnection, Palo Duro Wind, LLC (Palo Duro I) and Palo Duro Wind II, LLC (Palo Duro II) (collectively, Palo Duro Parties),<sup>1</sup> effective October 22, 2014, as requested,<sup>2</sup> as discussed below. In addition, the Commission grants Palo Duro Interconnection's request for waiver of the 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 (Open Access Waivers) for shared generator interconnection facilities (Shared Facilities).

**I. Background**

2. Palo Duro I is developing and will own and operate an approximately 263 MW wind energy generating facility located in Beaver County, Oklahoma and Ochiltree and Hansford Counties, Texas (Palo Duro I Facility). Palo Duro I is an exempt wholesale

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<sup>1</sup> The Palo Duro Parties are wholly-owned indirect subsidiaries of NextEra Energy Resources, LLC, which is a wholly-owned subsidiary of NextEra Energy, Inc.

<sup>2</sup> Palo Duro Wind Interconnection Services, LLC, FERC FPA Electric Tariff Agreements, [Palo Duro Interconnection, Shared Facilities Agreement, 0.0.0](#)

generator (EWG)<sup>3</sup> and has been granted market-based rate authority.<sup>4</sup> Palo Duro II is developing and will own and operate at a later time an approximately 36 MW wind energy generating facility in the same general location as the Palo Duro I Facility (Palo Duro II Facility). Palo Duro Interconnection states that Palo Duro II has not filed for EWG status or requested market-based rate authority. Palo Duro I and Palo Duro II each owns its 34.5kV collection facilities. The Shared Facilities owned by Palo Duro Interconnection include a 5 mile, 34.5 kV overhead transmission line to the Point of Interconnection and Point of Change of Ownership with the transmission owner, and other associated equipment.

3. Palo Duro Interconnection states that it has a Generator Interconnection Agreement (GIA) with Southwest Power Pool, Inc. and Oklahoma Gas & Electric Company (OG&E), and will receive service for 300 MW of capacity, which accommodates the 263 MW needed for the output of the Palo Duro I Facility and the 36 MW needed for the Palo Duro II Facility. Palo Duro Interconnection states that it has in turn entered into the Shared Facilities Agreement with Palo Duro I and Palo Duro II.<sup>5</sup>

4. On October 21, 2014, Palo Duro Interconnection filed the Shared Facilities Agreement pursuant to section 205 of the Federal Power Act (FPA).<sup>6</sup> Palo Duro Interconnection states that the Shared Facilities Agreement provides Palo Duro I and Palo Duro II the right to access and utilize Palo Duro Interconnection's Shared Facilities for the purpose of operating the Palo Duro I Facility and the Palo Duro II Facility and interconnecting those facilities to the OG&E substation. Palo Duro Interconnection explains that the Shared Facilities Agreement requires Palo Duro I and Palo Duro II to reimburse Palo Duro Interconnection for operations and maintenance costs. In addition, Palo Duro Interconnection states that the Shared Facilities Agreement addresses priority of curtailment between the Palo Duro I Facility and Palo Duro II Facility and responses to adverse events.

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<sup>3</sup>See Notice of Effectiveness of Exempt Wholesale Generator Status, Docket No. EG14-77-000 (issued Oct. 15, 2014).

<sup>4</sup> See *Mammoth Plains Wind Project, LLC, et al.*, Docket Nos. ER14-2707-001, *et al.*, (Oct. 24, 2014) (delegated letter order).

<sup>5</sup> Palo Duro Interconnection notes that there was an earlier version of the Shared Facilities Agreement, but it was amended before it could be filed with the Commission.

<sup>6</sup> 16 U.S.C. § 824d (2012).

5. Palo Duro Interconnection also requests waiver of: (1) the requirements under Order Nos. 888<sup>7</sup> and 890,<sup>8</sup> and 18 C.F.R. § 35.28<sup>9</sup> to file an OATT; (2) the requirements under Order No. 889<sup>10</sup> and 18 C.F.R. Part 37<sup>11</sup> to establish an OASIS; (3) the requirements under Order Nos. 889, 2004,<sup>12</sup> and 717,<sup>13</sup> and Part 358<sup>14</sup> of the

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<sup>7</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, *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).

<sup>8</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 (2009) *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009) (Order No. 890).

<sup>9</sup> 18 C.F.R. § 35.28 (2014).

<sup>10</sup> *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).

<sup>11</sup> 18 C.F.R. pt. 37 (2014).

<sup>12</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 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) (Order No. 2004).

<sup>13</sup> *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.

(continued...)

Commission's regulations to comply with the Standards of Conduct for transmission providers; and (4) the prior notice requirement in Section 35.3 of the Commission's regulations.

6. Palo Duro Interconnection states that good cause exists for the Commission to grant Palo Duro Interconnection these waivers because the Palo Duro Parties' shared facilities are not an integrated component of any electricity grid and were designed solely to enable generators to transmit the power from their facilities to the grid. Palo Duro Interconnection asserts that it would be burdensome for Palo Duro Interconnection to file an OATT or to establish an OASIS for a situation such as this where generators are simply sharing interconnection facilities, and the facilities controlled by Palo Duro Interconnection are limited and discrete. Palo Duro Interconnection also states that the Commission's practice is to grant such waivers to small utilities and it satisfies the criteria of a small utility because the maximum amount of energy that could be transmitted each year from the Palo Duro I Facility and Palo Duro II Facility over the 34.5 kV line to the substation owned by OG&E is 2,628,000 MWh, which is substantially less than the annual 4,000,000 MWh threshold for small utilities. Therefore, Palo Duro Interconnection requests that the Commission grant it a waiver of the requirement to file an OATT under Order Nos. 888 and 890, a waiver of the OASIS requirement of Order No. 889, and a waiver of the Standards of Conduct.

## **II. Notice of Filing**

7. Notice of the filing was published in the *Federal Register*, 79 Fed. Reg. 64,378 (2014), with interventions and comments due on or before November 7, 2014.<sup>15</sup> None was filed.

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¶ 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) (Order No. 717).

<sup>14</sup> 18 C.F.R. pt. 358 (2014).

<sup>15</sup> See *Palo Duro Wind Interconnection Services, LLC*, Errata Notice Shortening Comment Date, Docket No. ER15-139-000 (issued Oct. 29, 2014).

### **III. Discussion**

#### **A. Shared Facilities Agreement**

8. The terms and conditions of the Shared 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 Shared Facilities Agreement, to become effective October 22, 2014, as requested.

9. We find good cause to grant waiver of the 60-day prior notice requirement, under 18 C.F.R. § 35.11 (2014), in order to allow the proposed Shared Facilities Agreement to go into effect one day from the date of filing, on October 22, 2014, as requested. Palo Duro Interconnection states that Palo Duro I plans to start commercial operations shortly and needs to finalize all regulatory approvals in time to complete project financing of Palo Duro I and Palo Duro Interconnection in December 2014.<sup>16</sup>

#### **B. Open Access Waivers for Palo Duro Interconnection**

10. 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. Order No. 889 and Part 37 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.<sup>17</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>18</sup> 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

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<sup>16</sup> Palo Duro Interconnection Transmittal Letter at 5.

<sup>17</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>18</sup> 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*).

requests for waiver under Order Nos. 888 and 889.<sup>19</sup> Order No. 717 did not change those criteria.<sup>20</sup>

11. 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.<sup>21</sup>

12. 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.<sup>22</sup>

13. 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

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<sup>19</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>20</sup> See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

<sup>21</sup> *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

<sup>22</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.

used its access to information about transmission to benefit the utility or its affiliate (for Standards of Conduct waivers).<sup>23</sup>

14. Based on Palo Duro Interconnection's representations, we find that the Shared Facilities qualify as limited and discrete facilities that do not constitute an integrated transmission system. Palo Duro Interconnection represents that the Shared Facilities are not an integrated component of any electricity grid and were designed solely to enable generators to transmit the power from their facilities to the grid. Accordingly, we will grant Palo Duro Interconnection's request for waiver of the requirements under Order Nos. 888 and 890 and section 35.28 of the Commission's regulations to have an OATT on file with respect to those facilities. However, if Palo Duro Interconnection 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.<sup>24</sup>

15. The Commission will also grant Palo Duro Interconnection's request for waiver of the requirements under Order No. 889 and Part 37 of the Commission's regulations to establish an OASIS and the requirements under Order Nos. 889, 2004, and 717, and Part 358 of the Commission's regulations to comply with the Standards of Conduct with respect to the Shared Facilities. 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.<sup>25</sup> 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 that Palo Duro Interconnection has unfairly used its access to information to unfairly benefit itself or its affiliates.<sup>26</sup>

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<sup>23</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 Utils. Comm'n*, 83 FERC ¶ 61,334, at 62,343 (1998) (*Easton*)).

<sup>24</sup> *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

<sup>25</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>26</sup> *Id.* Palo Duro Interconnection 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 P 1 (2009).

**C. Missing Material from E-tariff**

16. Palo Duro Interconnection's electronic tariff filing of its proposed Shared Facilities Agreement is missing information that was provided in the transmittal letter. The date of when the GIA was amended is left blank. Accordingly, we will direct Palo Duro Interconnection to resubmit a complete Shared Facilities Agreement within 30 days of this order.<sup>27</sup>

The Commission orders:

(A) Palo Duro Interconnection's proposed Shared Facilities Agreement is hereby conditionally accepted for filing, effective October 22, 2014, as requested, as discussed in the body of this order.

(B) Palo Duro Interconnection is directed to submit a compliance filing within 30 days of the issuance of this order, as discussed in the body of this order.

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

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>27</sup> Palo Duro Interconnection should make its compliance filing in eTariff using the following coding: Type of Filing Code 80 – Compliance.