

149 FERC ¶ 61,280
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

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| Rising Tree Wind Farm LLC | Docket Nos. | ER15-268-000 |
| Rising Tree Wind Farm II LLC | | ER15-270-000 |
| Rising Tree Wind Farm III LLC | | ER15-271-000 |

ORDER ACCEPTING AGREEMENT FOR FILING
AND GRANTING WAIVERS

(Issued December 30, 2014)

1. In this order, the Commission accepts the Amended and Restated Large Generator Interconnection Agreement Co-Tenancy Agreement (Co-Tenancy Agreement) filed by Rising Tree Wind Farm LLC (Rising Tree), Rising Tree Wind Farm II LLC (Rising Tree II), and Rising Tree Wind Farm III LLC (Rising Tree III) (collectively, Applicants), effective December 5, 2014, as requested.¹ In addition, as discussed below, this order grants the Applicants' requests for 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 facilities.

I. Background

2. Rising Tree is an exempt wholesale generator (EWG) with market-based rate authority.² Rising Tree is constructing and will own and operate a 79.2 MW wind-powered electric generation facility located in Kern County, California.

¹ Consistent with eTariff procedures on filing joint rate schedules, each party filed the Co-Tenancy Agreement in a separate docket.

² See *Headwaters Wind Farm LLC, et al.*, Docket No. ER14-1933-000 (July 2, 2014) (unpublished letter order).

3. Rising Tree II is an EWG³ with market-based rate authority.⁴ Rising Tree II is constructing and will own and operate a 19.8 MW wind-powered electric generation facility located in Kern County, California.
4. Rising Tree III intends to operate as an EWG with market-based rate authority.⁵ Rising Tree III is developing and will own and operate a 99 MW wind-powered electric generation facility located in Kern County, California.
5. Applicants will jointly own an approximately 4-mile 220 kV generation tie line, related substation, and other appurtenant shared equipment (Facilities) in order to be interconnected to the transmission system owned by Southern California Edison Company (SoCal Edison) and operated by the California Independent System Operator Corporation (CAISO). Applicants are therefore currently parties to a First Amended Large Generator Interconnection Agreement (Amended LGIA) with SoCal Edison and CAISO.⁶ Applicants anticipate that the Facilities will be energized on or about December 5, 2014.

II. Instant Filing

A. Co-Tenancy Agreement

6. The Co-Tenancy Agreement memorializes the terms and conditions, pursuant to which the Applicants will own, utilize, operate, and maintain the Facilities for the purpose of interconnecting their respective generating facilities to the SoCal Edison system. Specifically, the Co-Tenancy Agreement governs the rights and obligations of each Applicant with respect to the Amended LGIA and ownership, operation, and use of the Facilities. Under the Co-Tenancy Agreement, each Applicant will have an undivided

³ On August 4, 2014, in Docket No. EG14-54-000, the Commission issued a Notice of Effectiveness of EWG status for Rising Tree II.

⁴ *See Headwaters Wind Farm LLC, et al.*, Docket No ER14-1933-000 (July 2, 2014) (unpublished letter order).

⁵ Rising Tree Transmittal Letter at 3.

⁶ On October 30, 2014, in Docket No. ER14-2815-000, the Commission accepted SoCal Edison's Amended LGIA among Applicants, SoCal Edison, and CAISO. The Amended LGIA reflects, among other things, a change in the generating facility ownership from Rising Tree, as sole owner, to Rising Tree, Rising Tree II, and Rising Tree III as co-tenants in common, each owning a discrete phase of the generating facility.

ownership interest as a tenant-in-common in the Facilities and the Amended LGIA equal to the Applicant's percent of interconnection capacity.⁷

7. Applicants state that Rising Tree will function as a manager, acting as an agent on behalf of Applicants, with respect to the Amended LGIA. In addition, Applicants state that all expenses related to the Amended LGIA, maintenance of the Facilities, and management fees will be shared on the basis of each Applicant's respective *pro rata* ownership interest. Applicants also state that they will not provide any jurisdictional services to each other and will not pay one another for any jurisdictional services.⁸

B. Waiver Requests

8. Applicants request that the Commission waive the requirements under Order Nos. 888⁹ and 890¹⁰ of the Commission's regulations¹¹ to file an OATT, the requirements under Order No. 889¹² and Part 37 of the Commission's regulations¹³ to

⁷ Exhibit B of the Agreement reflects each Applicant's *pro rata* share of the Facilities.

⁸ Rising Tree Transmittal Letter at 4.

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).

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. Applicants state that the Facilities constitute limited and discrete facilities constructed for the purpose of delivering the output of Applicants' generating facilities to the integrated transmission system. Applicants contend that the Facilities are the type of limited and discrete facilities for 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 In addition, Applicants maintain that each Applicant's undivided ownership interest in the Facilities will be sized in accordance with the electrical output from its generating facility. As such, Applicants state that each Applicant will dispose of less than four million megawatt hours of energy annually and will meet the Commission's definition of a small public utility.¹⁶

9. In addition, Applicants request 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 file an OATT.¹⁷ Applicants explain that good cause for waiver is appropriate because such waiver will enable Applicants, which are at an advanced stage of construction, to effectuate timely interconnection of their generating facilities to the system.¹⁸

10. Furthermore, Applicants request waiver of the requirement in section 35.12 of the Commission's regulations,¹⁹ which requires a public utility to provide an estimate of transactions and revenues pursuant to its initial rate schedule. Applicants contend that the Co-Tenancy Agreement does not establish any rates because each Applicant will own and

¹⁴ 18 C.F.R. pt. 358 (2014).

¹⁵ Rising Tree Transmittal Letter at 5 and n. 16 (citing *Alta Wind I, LLC, et al.*, 134 FERC ¶ 61,109 (2011); *Alta Wind VII, LLC, et al.*, 140 FERC ¶ 61,096 (2012); *Bayonne Energy Ctr., LLC*, 136 FERC ¶ 61,019, at P 28 (2011); *Peetz Logan Interconnect, LLC*, 122 FERC ¶ 61,086 (2008).

¹⁶ *Id.* (citing *Wolverine Power Supply Corp., Inc.*, 127 FERC ¶ 61,159, at P 15 (2009)).

¹⁷ 18 C.F.R. § 35.28(d) (2014). Although Applicants requested waiver of section 35.28(d)(2), it appears they intended to seek waiver of section 35.28(d).

¹⁸ Rising Tree Transmittal Letter at 6.

¹⁹ 18 C.F.R. § 35.12 (2014).

utilize only that portion of the Facilities necessary to interconnect its individual generating facility to the SoCal Edison transmission system.²⁰

11. Finally, Applicants request waiver of the Commission's 60-day prior notice requirement to allow the Co-Tenancy Agreement to become effective on December 5, 2014, which is the date that the Facilities are expected to be energized and joint use of the Facilities will commence.²¹

III. Notice of Filings

12. Notices of Applicants' filings were published in the *Federal Register*, 79 Fed. Reg. 66,709, with motions to intervene, comments, and protests due on or before November 21, 2014. None were filed.

IV. Discussion

A. Co-Tenancy Agreement

13. We find that the terms and conditions of the Co-Tenancy Agreement appear to be just and reasonable. Accordingly, we will accept the proposed Co-Tenancy Agreement for filing, to become effective December 5, 2014, as requested.²²

B. Waiver Requests

14. 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, 2004,²³ and 717²⁴ and Part 358 of the

²⁰ Rising Tree Transmittal Letter at 4-5.

²¹ Rising Tree III will commence first production of test power in April 2015. Applicants Transmittal Letter at 3.

²² See *Central Hudson Gas & Electric Corp., et al.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

²³ *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.

(continued...)

Commission's regulations require public utilities to abide by certain Standards of Conduct.²⁵ 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 890.²⁶ The Commission has stated that the criteria for waiver of the requirements of Order No. 890 are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.²⁷ Order No. 717 did not change those criteria.²⁸

15. The Commission may grant 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.²⁹

16. 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

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).

²⁴ *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).

²⁵ 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.

²⁶ *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*).

²⁷ *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).

²⁸ *See* Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

²⁹ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

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.³⁰ 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 transmission information to benefit the utility or its affiliate (for Standards of Conduct waivers).³¹

17. Based on Applicants' representations that the Facilities will be used solely to transmit their generation to the SoCal Edison system, we find that the Facilities are limited and discrete and do not constitute an integrated transmission system for purposes of the waiver analysis considered in this order. Accordingly, we will grant Applicants 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 Applicants 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.³²

18. The Commission also will grant Applicants' 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 Applicants' 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.³³ Likewise, Applicants' waiver of the Standards of Conduct will remain in

³⁰ *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 four million megawatt hours annually.

³¹ *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*)).

³² *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

³³ *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 Applicants have used their access to information to unfairly benefit themselves or their affiliates.³⁴

19. Finally, we will grant Applicants' request for waiver of section 35.12 of the Commission's regulations because Applicants will not assess charges under the proposed Co-Tenancy Agreement.

The Commission orders:

(A) The Co-Tenancy Agreement among Applicants is hereby accepted for filing, effective December 5, 2014, as requested, as discussed in the body of this order.

(B) Applicants' 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) Applicants' request for waiver of section 35.12 of the Commission's regulations is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

³⁴ *Id.* Applicants must notify the Commission if there is a material change in facts that affect its 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 5 (2009).