

150 FERC ¶ 61,168
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

DTE Electric Company

Docket No. OA14-5-000

ORDER GRANTING, IN PART, REQUEST FOR WAIVERS

(Issued March 4, 2015)

1. In this order, we grant the request of DTE Electric Company (DTE Electric) for continued waiver of the requirements 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. We deny DTE Electric's request for a blanket waiver with respect to similar future waiver requests.

I. Background

2. On July 20, 2006, the Commission granted DTE Electric (formerly Detroit Edison Company) a partial waiver from the Standards of Conduct, finding that DTE Electric only owns limited and discrete transmission facilities that do not form an integrated transmission grid.¹ On April 5, 2007, the Commission found that the previous waiver granted to DTE Electric would continue to apply after certain wind generators connected to DTE Electric's facilities, recognizing that DTE Electric continued to own only limited and discrete transmission facilities that do not form an integrated transmission grid.² On September 27, 2011, the Commission granted DTE Electric a waiver of the requirements to file an OATT, to maintain an OASIS, and of the Standards of Conduct with respect to DTE Electric's ownership in a shared generator tie-line, finding that the generator tie-line facilities constitute limited and discrete facilities that do not form an integrated transmission system.³

¹ *High Island Offshore System, L.L.C.*, 116 FERC ¶ 61,047 (2006).

² *The Detroit Edison Co.*, 119 FERC ¶ 61,017 (2007).

³ *The Detroit Edison Co.*, 136 FERC ¶ 61,210 (2011).

3. On August 15, 2014, DTE Electric⁴ filed the instant request that the Commission grant continued waiver of the requirements to file an OATT, to establish and maintain an OASIS and to comply with the Commission's Standards of Conduct found in Order Nos. 888,⁵ 889,⁶ and 890⁷ and of section 35.28⁸ and Parts 37⁹ and 358 of the Commission's regulations.¹⁰ DTE Electric states that it is developing an approximately 110 MW wind generating facility located in Huron County, Michigan (Echo Facility), that is expected to become operational in October 2014.¹¹ DTE Electric explains that the Echo Facility will interconnect to the transmission grid through a seven-mile, 120 kV radial generator interconnection line and associated 120-to-345 kV step-up transformer.¹² DTE Electric represents that the Echo Facility interconnection facilities consist of discrete, radial facilities used solely to interconnect the Echo Facility to the transmission grid and will

⁴ DTE Electric states that it is a wholly-owned subsidiary of DTE Energy Company.

⁵ *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).

⁶ *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).

⁷ *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).

⁸ 18 C.F.R. § 35.28 (2014).

⁹ 18 C.F.R. pt. 37 (2014).

¹⁰ 18 C.F.R. pt. 358 (2014).

¹¹ Application at 3.

¹² *Id.*

not be shared with any other generating facility.¹³ DTE Electric also requests a blanket waiver with respect to any future limited and discrete interconnection facilities it may acquire or develop.¹⁴

II. Notice of Filing

4. Notice of the filing was published in the *Federal Register*, 79 Fed. Reg. 50,640 (2014), with interventions and comments due on or before September 5, 2014. None was filed.

III. Discussion

5. 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, 2004,¹⁵ and 717¹⁶ and Part 358 of the Commission's regulations require public utilities to abide by certain Standards of Conduct.¹⁷ In prior orders, the Commission has enunciated the standards for waiver of,

¹³ *Id.*

¹⁴ *Id.* at 4.

¹⁵ *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).

¹⁶ *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).

¹⁷ 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.

or exemption from, some or all of the requirements of Order Nos. 888 and 889.¹⁸ 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 889.¹⁹ Order No. 717 did not change those criteria.²⁰

6. 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.²¹

7. 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 (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.²²

8. 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

¹⁸ 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*).

¹⁹ 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).

²⁰ See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

²¹ *Black Creek*, 77 FERC at 61,941.

²² *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 four million MWh annually.

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).²³

9. Based on the statements in DTE Electric's filing, we find that the Echo Facility interconnection facilities are limited and discrete and do not constitute an integrated transmission system for purposes of the waiver analysis considered in this order. DTE Electric states that its transmission facilities will be used solely to interconnect the Echo Facility to the transmission grid. Accordingly, we will grant DTE Electric's request for continued waiver of the requirements set forth in Order Nos. 888, and 890, and in section 35.28 of the Commission's regulations to have an OATT on file. However, if DTE Electric 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.²⁴

10. The Commission will also grant DTE Electric's waiver of the requirements of Order No. 889 and Part 37 of the Commission's regulations with respect to the requirement to establish and maintain an OASIS and of the requirements of Order Nos. 889, 2004, and 717 and Part 358 with respect to abiding by the Standards of Conduct. We note that DTE Electric's 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 alleging that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation.²⁵ Likewise, DTE Electric's waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity alleging that DTE Electric has unfairly used its access to information to unfairly benefit itself or its affiliates.²⁶

11. DTE Electric also requests a blanket waiver of the requirements to file an OATT, to establish and maintain an OASIS and to comply with the Commission's Standards of Conduct with respect to future limited and discrete interconnection facilities it may acquire or develop in the future. The Commission will not grant such a blanket waiver and will evaluate the impact of the acquisition or development of any such facilities

²³ *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*).

²⁴ *Black Creek*, 77 FERC at 61,941.

²⁵ *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).

²⁶ *Id.*

when, and if, this actually occurs. If there is a material change in facts that affects DTE Electric's waiver, it must notify the Commission within 30 days of the date of any such change.²⁷

The Commission orders:

(A) DTE Electric's request for continued 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, as discussed in the body of this order.

(B) DTE Electric's request for blanket waiver is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁷ See *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).