

150 FERC ¶ 61,227
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.

Western Antelope Blue Sky Ranch A LLC

Docket Nos. ER15-914-000

Sierra Solar Greenworks LLC

ER15-916-000
(not consolidated)

ORDER ACCEPTING SHARED FACILITIES AGREEMENT AND GRANTING
REQUESTS FOR WAIVERS

(Issued March 27, 2015)

1. In this order, the Commission accepts the Shared Facilities Agreement (Agreement)¹ filed by Western Antelope Blue Sky Ranch A LLC (Western Antelope) and the related Certificate of Concurrence² filed by Sierra Solar Greenworks LLC (Sierra Solar) (collectively, Applicants), effective February 1, 2015, as requested. In addition, as discussed below, the Commission grants the Applicants' requests for waivers of: (1) the 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-

¹ Western Antelope notes the Agreement was amended by the First Amendment to Shared Facilities Agreement, dated December 5, 2014, by and among itself, Sierra Solar, Central Antelope Dry Ranch C LLC (Central Antelope), North Lancaster Ranch LLC (North Lancaster), FTS Devco, LLC (Devco), Tioga Services Company, LLC (Tioga Services), and Sustainable Property Holdings, LLC (f.k.a., FTS Property Holdings, LLC, Sustainable Property) (collectively, the Project Companies).

² Sierra Solar filed a Certificate of Concurrence and a request for waiver of the Commission's prior notice requirement in Docket No. ER16-916-000 on January 27, 2015. On February 13, 2015, in the same docket, they filed a request for the balance of waivers specified in Western Antelope's Filing.

Time Information System (OASIS) for the facilities; (2) Part 101³ of the Commission's regulations; and (3) the Commission's prior notice requirement.⁴

I. Background

2. Each of the Project Companies is a Delaware limited liability company, and each is a wholly-owned, direct or indirect subsidiary of FTP Power LLC (FTP Power), with the exception of Western Antelope. Western Antelope is a wholly-owned subsidiary of SPW Solar Holdings 1, LLC, a Delaware limited liability company in which SPW Solar Managing Member 1, LLC (SPWSMM) is the managing member; SPWSMM is, in turn, a wholly-owned indirect subsidiary of FTP Power. Western Antelope states the Project Companies are affiliates.⁵

3. Western Antelope owns and operates a solar photovoltaic (PV) project with a nameplate capacity rating of 20 MW AC located in Los Angeles County, California (the Western Antelope Project). Western Antelope has filed notices with the Commission of the Western Antelope Project's status as a qualifying facility⁶ (QF) and as an exempt wholesale generator (EWG).⁷ The Western Antelope Project began commercial operation in November 2014.⁸

4. Sierra Solar is developing a solar PV project with a nameplate capacity rating of 20 MW AC located in Los Angeles County, California (the Sierra Solar Project). Sierra Solar has filed notices with the Commission of the Sierra Solar Project's status as a QF⁹

³ 18 C.F.R. pt. 101 (2014).

⁴ 18 C.F.R. § 35.11 (2014).

⁵ Western Antelope Transmittal Letter at 2.

⁶ FERC Form 556 Self-Certification of Qualifying Facility Status for a Small Power Production or Cogeneration Facility, Docket No. QF15-14 (filed Oct. 13, 2014).

⁷ Western Antelope Notice of Self-Certification of Exempt Wholesale Generator Status, Docket No. EG15-7-000 (filed Oct. 29, 2014).

⁸ Western Antelope Transmittal Letter at 2-3.

⁹ FERC Form 556 Self-Certification of Qualifying Facility Status for a Small Power Production or Cogeneration Facility, Docket No. QF15-17 (filed Oct. 13, 2014).

and as an EWG.¹⁰ The Sierra Solar Project is scheduled to be placed in service in April 2015. Central Antelope and North Lancaster are each developing a solar PV project with a nameplate capacity rating of 20 MW AC to be located in the vicinity of the Western Antelope Project and the Sierra Solar Project (the Central Antelope Project and North Lancaster Project, respectively). Devco is developing a solar PV project with a nameplate capacity rating of 10 MW AC, also to be located in the vicinity of the Western Antelope Project and the Sierra Solar Project (the Devco Project).¹¹

II. Description of the Agreement

5. Pursuant to section 205 of the Federal Power Act (FPA),¹² and sections 35.12 and 385.207 of the Commission's regulations,¹³ Western Antelope filed the Agreement.¹⁴ Under the Agreement, each Project Company owns, or will own, all equipment between its respective Project and the 66 kV common bus arrangement. Each Project Company will jointly own the shared facilities, including a 66 kV radial transmission line (Transmission Line). The Agreement states that the shared facilities¹⁵ include the mechanical, structural, and electrical/telecommunication components located from the

¹⁰ Sierra Solar Notice of Self-Certification of Exempt Wholesale Generator Status, Docket No. EG15-21-000 (filed Dec. 4, 2014).

¹¹ The Western Antelope Project, the Sierra Solar Project, the Central Antelope Project, the North Lancaster Project, and the Devco Project are collectively referred to as the "Projects."

¹² 16 U.S.C. § 824(d) (2012).

¹³ 18 C.F.R. § 35.12 (2014) and 18 C.F.R. §385.207 (2014).

¹⁴ As stated previously, though Sierra Solar filed a Certificate of Concurrence, none of the other Project Companies joined in this filing "because their ownership interest in the shared interconnection line will remain zero percent until its respective Project exercises its "Undivided Use Interest" consistent with Section 4.2 of the Agreement." Western Antelope states that, prior to the time a project company obtains an ownership interest greater than zero percent, it will file the appropriate documents with the Commission. Western Antelope Transmittal Letter at 3, n.9.

¹⁵ Western Antelope currently owns a 100 percent interest in the shared facilities, which deliver the output of its Project to the point of change in ownership specified in its long-term power purchase agreement with Pacific Gas and Electric Company (PG&E), a non-affiliate.

66 kV common bus arrangement to the point of change of ownership, including the common bus, a common circuit breaker, a 66 kV conductor extending from the common bus to the point of change of ownership for each Project's output which is approximately 2,416 feet long, and any associated non-utility poles.

6. The Agreement specifies that the Project Companies will each become a co-tenant with Western Antelope in the shared facilities on or before the Commissioning Date (as defined in the Agreement) for its respective Project, and the Transmission Line will facilitate the delivery of output from each Project to its long-term off-taker at the integrated transmission grid controlled by the California Independent System Operator Corporation (CAISO).¹⁶

7. The following are what Western Antelope describes as some of the key terms and conditions of the Agreement:

- Article 4 states that each Project Company has the right to an undivided interest in (1) the Shared Assets¹⁷ as a tenant-in-common; and (2) the capacity of the shared facilities and the delivery capability of the Transmission Line in an amount equal to its proportionate share (as defined in the Agreement). Article 4 also provides that, in the event of a partial curtailment or a de-rating of the Transmission Line, the Project Companies' undivided use interest will be reduced pro rata in accordance with its proportionate share. Additionally, Article 4 provides for payment by each Project Company to reimburse Tioga Services for bearing the costs and expenses of design, procurement, construction, and installation of the shared facilities;
- Article 5 provides that the Project Companies will share line losses in proportion to its ownership interest;
- Article 3 states that Sustainable Property has granted, or will grant, each Project Company an undivided interest in the shared real property. Also pursuant to Article 3, each Project Company has the right to a non-exclusive right of access to

¹⁶ Western Antelope states that "the Agreement is being filed ... now in anticipation of Sierra Solar's exercising its Undivided Use Interest as it commissions the Sierra Solar Project in [quarter one] (Q1) 2015." Western Antelope Transmittal Letter at 4.

¹⁷ The shared facilities and shared real property are referred to together in the Agreement as "Shared Assets."

the Shared Assets to ensure, among other things, that its Project remains operational;

- Under Article 6, the Project Companies engage Tioga Services to manage, operate, maintain and repair the shared facilities, and each Project Company is obligated to pay Tioga Services for its share of the related expenses, in proportion to such Project Company's undivided use interest (as defined in the Agreement);
- Article 10 sets forth certain covenants of the Project Companies, including the obligation of each Project Company not to materially interfere with the other Project Companies' use and enjoyment of their respective interests in the Shared Assets.¹⁸

III. Requested Waivers

8. Applicants request that the Commission waive the requirements under Order Nos. 888¹⁹ and 890²⁰ of the Commission's regulations²¹ to file an OATT, the requirements under Order No. 889²² and Part 37 of the Commission's regulations²³ to

¹⁸ Western Antelope Transmittal Letter at 4.

¹⁹ *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).

²⁰ *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).

²¹ 18 C.F.R. § 35.28 (2014).

²² *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).

establish an OASIS, and the requirements under Order No. 889 and Part 358 of the Commission's regulations²⁴ to comply with the Standards of Conduct for the shared facilities. They also request waiver of Part 101 of the Commission's regulations, which deals with the Uniform System of Accounts, and of the Commission's prior notice requirement to allow the Agreement to be effective as of February 1, 2015.

9. In support of their request, Applicants state each of the Project Companies will own the shared facilities in order to deliver its respective Project's output to the integrated transmission grid, and thus the shared facilities, including the 66 kV transmission line, are limited and discrete. In addition, Applicants state that the shared facilities were designed for the sole purpose of transmitting electrical energy from the Projects to the point of interconnection with the CAISO-controlled grid, and none are an integrated component of any transmission grid. In support of their request for a waiver of Part 101, Applicants state that the Project Companies "are affiliates that own and operate *de minimis* jurisdictional facilities and seek to provide service only to one another, [and] that it would be costly and burdensome to comply with Part 101 under the circumstances."²⁵

10. Finally, Applicants request waiver of the Commission's prior notice requirement, stating that a February 1, 2015 effective date is necessary to maintain their contractual obligations and commissioning schedule.²⁶

IV. Notice of Filing

11. Notice of Western Antelope's filing in Docket No. ER15-914-000 and Sierra Solar's Certificate of Concurrence filing in ER15-916-000 was published in the *Federal Register*, 80 Fed. Reg. 5742 (2015), with interventions or protests due on or before February 17, 2015. Notice of Sierra Solar's additional filing in Docket No. ER15-916-000 was published in the *Federal Register*, 80 Fed. Reg. 9706 (2015), with interventions or protests due on or before March 5, 2015. No interventions or protests were filed in any of the proceedings.

²³ 18 C.F.R. pt. 37 (2014).

²⁴ 18 C.F.R. pt. 358 (2014).

²⁵ *Id.* at 8-9.

²⁶ Sierra Solar Transmittal Letter at 2.

V. Discussion

A. Shared Facilities Agreement and Certificate of Concurrence

12. The terms and conditions of the Agreement appear to be just and reasonable, and, accordingly, we will accept the proposed Agreement and Certificate of Concurrence, effective February 1, 2015, as requested.²⁷ The Commission also grants the requested waiver of Order Nos. 888, 889, and 890; section 35.28, Part 37, Part 101 and Part 358 of the Commission's regulations; and waiver of the Commission's prior notice requirement, as discussed below.

B. Waiver Requests

13. 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, 2004,²⁸ and 717²⁹ and Part 358 of the Commission's regulations require public utilities to abide by certain Standards of Conduct.³⁰ In prior orders, the Commission has enunciated the standards for waiver of,

²⁷ See *Central Hudson Gas & Elec. Corp., et al.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

²⁸ *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).

²⁹ *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).

³⁰ 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, 889, and 890.³¹ 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 889.³² Order No. 717 did not change those criteria.³³

14. 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 a *pro forma* 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.³⁴

15. 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 (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.³⁵

16. 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

³¹ See, e.g., *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996); *Entergy Mississippi, Inc.* 112 FERC ¶ 61,228, at P 22 (2005).

³² 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).

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

³⁴ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

³⁵ *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.

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).³⁶

17. Based on the Applicants' representations, we find that the shared facilities are limited and discrete and do not constitute an integrated transmission system for purposes of the waiver analysis considered in this order. The shared facilities were designed exclusively for transmitting electrical energy from the Projects to the point of interconnection with the CAISO-controlled grid. 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 Western Antelope 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.³⁷

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.³⁸ Likewise, Applicants' waiver of the Standards of Conduct will remain in 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.³⁹

³⁶ *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*)).

³⁷ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

³⁸ *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).

³⁹ *Id.* Applicants must notify the Commission if there is a material change in facts that affects their 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).

19. The Commission will grant Applicants' request for waiver of Part 101 of the Commission's regulations.⁴⁰ Notwithstanding the waiver of accounting requirements of Part 101, we expect Applicants to keep all accounting records in accordance with generally accepted accounting principles.

20. The Commission finds good cause exists to grant waiver of the prior notice requirement,⁴¹ and therefore accepts the Agreement and Certificate of Concurrence for filing, effective February 1, 2015, as requested.

The Commission orders:

(A) The Applicants' proposed Agreement and Certificate of Concurrence are hereby accepted for filing, effective February 1, 2015, as discussed in the body of this order.

(B) The Applicants' waiver requests are hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁴⁰ *Prairie Rose Transmission, LLC*, 140 FERC ¶ 61,245, at P 15 (2012).

⁴¹ 18 C.F.R. 35.11 (2014); *see also Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,338 (stating that the Commission will grant waiver of notice when the effective date is prescribed by an agreement on file with the Commission), *order on reh'g*, 61 FERC ¶ 61,089 (1992).