

151 FERC ¶ 61,153  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Eagle Point Power Generation LLC

Docket No. OA15-1-000

ORDER GRANTING REQUEST FOR WAIVERS

(Issued May 19, 2015)

1. In this order, we grant a request by Eagle Point Power Generation LLC (Eagle Point) for 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.

**I. Background**

2. On January 29, 2015, Eagle Point filed a request that the Commission grant waiver of the requirements to file an OATT, to establish and maintain an OASIS, and to comply with the Commission's Standards of Conduct<sup>1</sup> found in Order Nos. 888,<sup>2</sup> 889,<sup>3</sup> 890,<sup>4</sup>

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<sup>1</sup> Subsequent to the filing of this application, the Commission issued Order No. 807, which will become effective June 30, 2015. In Order No. 807, the Commission amended its regulations to waive the OATT requirements of section 35.28, the OASIS requirements of Part 37, and the Standards of Conduct requirements of Part 358, under certain conditions, for entities that own interconnection facilities. *Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities*, Order No. 807, FERC Stats. & Regs. ¶ 31,367 (2015).

<sup>2</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).

717,<sup>5</sup> and 2004<sup>6</sup> and section 35.28<sup>7</sup> and Parts 37<sup>8</sup> and 358 of the Commission's regulations.<sup>9</sup>

3. Eagle Point states that it owns a natural gas-fired electric generation facility located in Westville, New Jersey with a capacity of 225 MW (Eagle Point Facility). Eagle Point also states that it is an Exempt Wholesale Generator (EWG)<sup>10</sup> that has market-based rate and reactive power tariffs on file with the Commission. In addition to owning the Eagle Point Facility, Eagle Point states that it shares ownership interest in the

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<sup>3</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).

<sup>4</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).

<sup>5</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. ¶ 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).

<sup>6</sup> The standards of conduct were originally adopted in Order No. 2004; *see Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003) (Order No. 2004), *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).

<sup>7</sup> 18 C.F.R. § 35.28 (2014).

<sup>8</sup> 18 C.F.R. Part 37 (2014).

<sup>9</sup> 18 C.F.R. Part 358 (2014).

<sup>10</sup> EWGs are generators whose activities are limited to the exclusive business of selling electric energy at wholesale.

facilities that interconnect (Eagle Point Interconnection) the Eagle Point Facility to Public Service Electric & Gas Company's (PSEG) transmission facilities. Eagle Point also states that the Eagle Point Interconnection was implemented through an Interconnection Service Agreement (ISA), which was accepted for filing under the PJM Interconnection, L.L.C. (PJM) OATT on December 4, 2012, under delegated authority.<sup>11</sup>

4. Eagle Point further states that the Eagle Point Interconnection is comprised of: (1) a 230kV bus (Bus 1); (2) a 230 kV circuit breaker (CB 100); (3) a second 230 kV circuit breaker (CB 101) and; (3) a third 230 kV circuit breaker (CB 102). Eagle Point explains that, in particular, Bus 1 and CB 100 of the Eagle Point Interconnection might be considered transmission facilities by the Commission, given their physical proximity to the PSEG transmission system. Specifically, CB 100 is situated on a PSEG transmission line and is part of an interconnection configuration that allows multiple paths for power to be transmitted.<sup>12</sup> Bus 1 forms part of the same breaker station as CB 100.

5. Eagle Point states that it recently has become aware that its Bus 1 and CB 100 facilities that it purchased in 2012 are considered transmission elements by PJM. Eagle Point states that, prior to these discussions being held, it did not consider the facilities to be transmission facilities. Eagle Point concedes that, if the Commission determines that Bus 1 and CB 100 are indeed transmission facilities, then such facilities would be subject to OATT, OASIS, and Standards of Conduct filing requirements. In such an event, Eagle Point requests a waiver of these requirements.

6. In support of its waiver request, Eagle Point argues that it should be granted a waiver of the Commission's OATT, OASIS, and Standards of Conduct requirements for Eagle Point Bus 1 and CB 100, as compliance with these requirements would be unnecessary and unduly burdensome.

7. Eagle Point argues further that a waiver is warranted because Bus 1 and CB 100 should be deemed discrete and limited.<sup>13</sup> In this regard, Eagle Point relies on Commission precedent to substantiate the request for waivers of OATT and OASIS filing

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<sup>11</sup> The original interconnection agreement was entered into among PSEG, Sunoco Power Generation LLC (Sunoco Generation), and Sunoco Partners Marketing and Terminals, L.P. (Sunoco Partners). On April 2, 2012, Sunoco Generation sold its interests in both the Eagle Point Facility and the Interconnection Facilities. For clarity, Sunoco Generation changed its name to Eagle Point Power Generation LLC.

<sup>12</sup> Eagle Point Transmittal at 14.

<sup>13</sup> *Id.* at 12.

requirements.<sup>14</sup> Eagle Point argues that, while Bus 1 and CB 100 may be viewed as part of PSEG's transmission system, they are only limited and discrete pieces of equipment that sit on PSEG's transmission line, over which Eagle Point has no operational control.<sup>15</sup> Moreover, Eagle Point asserts that operation and control of the transmission of electric power from its generation and related facilities is explicitly under the control of PSEG, a transmission owner, pursuant to the Eagle Point ISA.<sup>16</sup>

8. Eagle Point also states that CB 100 normally operates in the closed position (which allows the transfer of power across PSEG's transmission lines), but that such transmission service is available through PSEG under the PJM OATT,<sup>17</sup> thus rendering further OATT and OASIS provisions for the equipment unnecessary. In addition, Eagle Point explains that CB 100 does not provide point-to-point or network integration transmission service. Thus, requiring OATT or OASIS requirements would provide no useful value to customers, given that Eagle Point does not operate CB 100, nor would Eagle Point be able to deny service, as it is not in control of service over the facilities at issue.<sup>18</sup> Eagle Point further states that neither the Eagle Point Facility nor the Eagle Point Interconnection was purchased with any intention by Eagle Point to enter into the business of providing transmission service. Eagle Point also states that the Eagle Point ISA never indicated that such facilities were part of PSEG's transmission system.<sup>19</sup> Eagle Point also notes that the Eagle Point Interconnection initially was constructed to interconnect the Eagle Point Facilities to PSEG's transmission system and, thus, it is PSEG, and not Eagle Point, that controls the Eagle Point Interconnection.<sup>20</sup>

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<sup>14</sup> *Id.* at n.36 (citing *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*)).

<sup>15</sup> *Id.* at 12.

<sup>16</sup> *See* Eagle Point Interconnection ISA at §§1.1, 2.1, 5.1(a) and recitals.

<sup>17</sup> *Id.* at 13.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 17.

<sup>20</sup> *Id.* at 14-15.

9. Eagle Point also contends that waiver is appropriate because it is a small public utility<sup>21</sup> that owns only limited and discrete transmission facilities and has no access to transmission function information.<sup>22</sup> Specifically, Eagle Point States that it has 118 employees and sold 81,132 MWh of electric power in 2012 and 93,160 MWh in 2013.<sup>23</sup> Eagle Point asserts that it qualifies as a small public utility because it employs less than 750 people and has less than 4 million MWh in sales for resale annually. Eagle Point notes that the Commission grants waivers of the Standards of Conduct to public utilities that meet the Small Business Administration's definition of a small electric utility.<sup>24</sup>

10. Eagle Point also states that waiver of the Standards of Conduct filing requirements is appropriate because it does not perform any of the functions that a typical transmission provider performs and has no transmission function employees. Moreover, Eagle Point affirms that it does not engage in any transmission transaction with any entity. Eagle Point notes that the Commission has acknowledged that a public utility that does not engage in any transmission transactions with a marketing affiliate is not required to comply with the Standards of Conduct.<sup>25</sup> Accordingly, Eagle Point argues that requiring it to abide by the Standards of Conduct is unnecessary.

11. Eagle Point also avers that requiring compliance with the Standards of Conduct would impose an undue burden on Eagle Point.<sup>26</sup> Specifically, Eagle Point notes that "the Commission has recognized that the need to prevent undue discrimination and affiliate abuse must be balance against the costs associated with compliance with the Standards of Conduct."<sup>27</sup> Eagle Point further states that this balance against costs associated with compliance is the reason that the Commission grants waivers of the Standards of Conduct.

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<sup>21</sup> *Black Creek*, 77 FERC ¶ 61,232 at 61,941 ("To qualify as a small public utility for the purposes of waiver of the Standards of Conduct, a public utility must have less 4 Million MWh annually in sales for resale.").

<sup>22</sup> Eagle Point Transmittal at 21.

<sup>23</sup> *Id.*, Attachment D, Affidavit of James Maiz on behalf of Eagle Point.

<sup>24</sup> See <https://www.sba.gov/content/summary-size-standards-industry-sector> . A public utility must employ less than 750 employees to qualify as a small public utility.

<sup>25</sup> Eagle Point Transmittal at 19.

<sup>26</sup> *Id.* at 20.

<sup>27</sup> *Id.*

12. Eagle Point acknowledges that any waiver granted to establish and maintain an OASIS would only be effective until the Commission takes action in response to any complaint by an entity alleging they could not obtain necessary transmission information from Eagle Point.<sup>28</sup> Eagle Point further recognizes that any waiver granted would only be effective until the Commission takes action on a complaint by an entity that Eagle Point has unfairly used access to transmission functions to unfairly benefit its own sales or that of an affiliate.<sup>29</sup>

## II. Notice

13. Notice of Eagle Point's filing was published in the *Federal Register*, 80 Fed. Reg. 7,443 (2015), with protests or interventions due on or before February 19, 2015. Sunoco Partners filed a timely motion to intervene. No protests or comments were filed.

## III. Discussion

14. As a preliminary matter, pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), Sunoco Partners' timely, unopposed motion to intervene serves to make it a party to this proceeding.

15. Order Nos. 888 and 890 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, and 717 and Part 358 of the Commission's regulations require public utilities to abide by certain Standards of Conduct.<sup>30</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 and 889.<sup>31</sup> The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and 2004 have not changed from those used to evaluate

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<sup>28</sup> *Id.* at 18.

<sup>29</sup> *Id.* at 22.

<sup>30</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>31</sup> *See, e.g., Black Creek*, 77 FERC ¶ 61,232 at 61,941; *Entergy*, 112 FERC ¶ 61,228 at P 22.

requests for waiver under Order Nos. 888 and 889.<sup>32</sup> Order No. 717 did not change those criteria.<sup>33</sup>

16. The Commission may grant requests for waiver of Order Nos. 888 and 890 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* tariff 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>34</sup>

17. The Commission has also determined that waiver of Order No. 889 would be appropriate for a public utility: (1) if the applicant owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) if the applicant is a small public utility that owns, operates, or controls an integrated transmission grid, unless it is a member of a tight power pool, or other circumstances are present that indicate that a waiver would not be justified.<sup>35</sup>

18. The Commission has held that a waiver of Order No. 889 and the Standards of Conduct 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

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<sup>32</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>33</sup> See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

<sup>34</sup> *Black Creek*, 77 FERC at 61,941.

<sup>35</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 four million MWh annually.

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).<sup>36</sup>

19. Based on the statements in Eagle Point's filing, we find that the facilities at issue are transmission facilities subject to the Commission's OASIS, OATT and Standards of Conduct requirements.<sup>37</sup> Additionally, however, we find that Eagle Point's transmission facilities are limited and discrete and do not constitute an integrated transmission system. Accordingly, we will grant Eagle Point's request for waiver of the requirements in Order Nos. 888 and 890 to have an OATT on file. However, if Eagle Point receives a request for transmission service, it must file a *pro forma* OATT with the Commission within 60 days of the date of the request.<sup>38</sup>

20. We will also grant Eagle Point's request for a 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 Eagle Point'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.<sup>39</sup> Likewise, Eagle Point's waivers of the Standards of Conduct

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<sup>36</sup> *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency (Central Minnesota)*, 79 FERC ¶ 61,260, at 62,127 (1997)); *Easton Utilities Commission*, 83 FERC ¶ 61,334, at 62,343 (1998) (*Easton*).

<sup>37</sup> Generator lead lines are transmission facilities. See 16 U.S.C. §§ 796(23), 824(a)-(b) (2012). See *Milford Wind Corridor, LLC*, 129 FERC ¶ 61,149, at P 24 (2009) (noting that designation as a "generator lead line" does not render a line exempt from the Commission's regulation of transmission facilities). See also *Evergreen Wind Power III, LLC*, 135 FERC ¶ 61,030 (2011).

<sup>38</sup> *Black Creek*, 77 FERC at 61,941.

<sup>39</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).

will remain in effect until the Commission takes action on a complaint by an entity alleging that Eagle Point has unfairly used its access to information to unfairly benefit itself or its affiliates.<sup>40</sup>

The Commission orders:

Eagle Point's 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, 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>40</sup> *Id.* Eagle Point must notify the Commission if there is a material change in facts that affects 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).