

151 FERC ¶ 61,212
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.

AES WR Limited Partnership

Docket No. ER15-1516-000

ORDER ACCEPTING LICENSE AND SHARED USE AGREEMENT AND
GRANTING REQUESTS FOR WAIVER

(Issued June 12, 2015)

1. On April 15, 2015, AES WR Limited Partnership (Warrior Run) filed a License and Shared Use Agreement¹ (License Agreement) between Warrior Run and AES ES Tait, LLC (AES ES Tait). The License Agreement governs Warrior Run's license of its interconnection facilities and grant of other rights of use to AES ES Tait in connection with the construction, ownership, use, operation, and maintenance of the Warrior Run Battery Project, a 10 MW battery-based energy storage project that will be installed at the site of the Warrior Run generating facility (Warrior Run Facility). AES ES Tait intends to provide regulation service to the PJM Interconnection, L.L.C. (PJM) market from the Warrior Run Battery Project. In this order, the Commission accepts for filing the License Agreement, effective June 15, 2015, as requested. We also grant Warrior Run's requests for waiver of the obligation to file an Open Access Transmission Tariff (OATT), to comply with the Commission's Standards of Conduct, and to establish and maintain an Open Access Same-Time Information System (OASIS).

I. Background

2. Warrior Run and AES ES Tait are both indirect, wholly-owned subsidiaries of The AES Corporation (AES). AES is a global energy company that owns and operates

¹ Designated as AES WR Limited Partnership Rate Schedule FERC No. 1 AES WR Limited Partnership, FERC FPA Electric Tariff, Tariffs, Rate Schedules and Service Agreements, Rate Schedule No. 1, AES WR Limited Partnership License Agreement (AES ES Tait), 0.0.0.

competitive and regulated generation in the United States through a number of merchant generation subsidiaries and two traditional regulated electric utility subsidiaries.

3. Warrior Run is a Delaware limited partnership that owns and operates the 180 MW (summer rating) Warrior Run Facility located near Cumberland, Maryland within the geographic footprint of PJM. The Warrior Run Facility has been certified by the Commission as a qualifying cogeneration facility under the Public Utility Regulatory Policies Act (PURPA).² The output of the Warrior Run Facility is sold to Potomac Edison Company (Potomac Edison) under a long-term PURPA contract. Warrior Run states that it has no captive wholesale or retail customers, does not own or control transmission facilities (except for a 138 kV transmission tie-line and associated limited interconnection facilities connecting Warrior Run to the Potomac Edison grid), and does not currently provide any transmission service to third parties.

4. AES ES Tait is the successor to AES ES Westover, LLC (AES ES Westover), which formerly operated a 20 MW battery-based storage project within the New York Independent System Operator's balancing authority area. The Commission granted AES ES Westover market-based rate authorization on April 23, 2010.³ AES ES Tait filed a Notice of Succession to AES ES Westover's market-based rate tariff on May 23, 2013, which the Commission accepted on June 26, 2013.⁴

5. According to Warrior Run, AES ES Tait intends to provide regulation service to the PJM market from the Warrior Run Battery Project, a 10 MW battery-based energy storage project that will be installed at the site of the Warrior Run Facility. In order to accomplish physical interconnection to the grid and provide regulation service to the PJM market, the Warrior Run Battery Project will need to use the 6-mile, 138 kV transmission tie-line running from the Warrior Run Facility to the Potomac Edison switchyard in Ridgeley, West Virginia and certain other interconnection facilities associated with Warrior Run's existing electrical interconnection with Potomac Edison. AES ES Tait will also install certain metering and other equipment at the Warrior Run site in connection with its use of the interconnection facilities.

² *AES WR Ltd. Partnership*, 60 FERC ¶ 62,011 (1992).

³ *AES ES Westover, LLC*, Docket Nos. ER10-712-000 and ER10-712-001 (Apr. 23, 2010) (delegated letter order). AES ES Westover's market-based rate authority is not subject to any limitations.

⁴ *AES ES Tait, LLC*, Docket No. ER13-1544-000 (June 26, 2013) (delegated letter order).

6. The License Agreement sets out the terms and conditions governing Warrior Run's license of the interconnection facilities and grant of other rights of use to AES ES Tait in connection with the construction, ownership, use, operation, and maintenance of the Warrior Run Battery Project and equipment at the Warrior Run site.

7. Warrior Run states that the License Agreement has been freely negotiated between Warrior Run and AES ES Tait, and that, under the terms of the License Agreement, AES ES Tait is required to make annual payments to Warrior Run (License Fee), beginning within five days of the acceptance of the License Agreement by the Commission and on each anniversary of that date for the remaining 14 years of the 15-year term. In addition to the License Fee payments, AES ES Tait will pay applicable utility charges and all personal property and real property taxes and other fees separately levied or assessed by any governmental authority upon the Equipment or other improvements installed by AES ES Tait at the Warrior Run site as well as a percentage of any personal property or real property tax or other taxes levied against the consolidated real property and interconnection at the Warrior Run site. Warrior Run also states that AES ES Tait's pro-rata share of such taxes will be computed in accordance with the allocation methodology set forth in Section 7.2 of the License Agreement.

8. Warrior Run further states that the charges to be paid by AES ES Tait under the License Agreement have been negotiated between AES ES Tait and Warrior Run, neither of which has any captive wholesale or retail customers.⁵ Warrior Run therefore requests waiver of any requirement to provide a statement of its cost computations pursuant to 18 C.F.R. § 35.12(b)(2)(ii).

9. Warrior Run states that it will not modify any facilities under the License Agreement. AES ES Tait will have the right (at its own expense) under the License Agreement to modify certain Warrior Run facilities to the extent necessary to achieve interconnection of the Warrior Run Battery Project to the grid and deliver regulation service to the PJM market.

10. Warrior Run requests that the Commission waive any otherwise applicable requirements for Warrior Run to file an OATT, maintain an OASIS, or adhere to the Standards of Conduct for transmission providers, as a result of the sharing of its interconnection facilities with AES ES Tait pursuant to the License Agreement. Specifically, Warrior Run requests waiver of the requirements of Order Nos. 888,⁶ 889,⁷

⁵ Transmittal Letter at 6.

⁶ *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
(continued ...)

and 890,⁸ and section 35.28⁹ and Parts 37¹⁰ and 358¹¹ of the Commission's regulations, and any other waiver necessary to enable the above actions.¹²

11. Warrior Run states that it meets the criteria set by the Commission for waiver of the requirements of Order Nos. 888, 889, 890, and section 35.28, Part 37, and Part 358 of the Commission's regulations. Warrior Run avers that its interconnection Facilities are limited and discrete transmission facilities rather than an integrated transmission grid. Warrior Run further states that it owns or controls only limited interconnection facilities at the Warrior Run site necessary to connect its generation with the transmission system of Potomac Edison that is under the control of PJM and subject to the PJM OATT. Furthermore, Warrior Run states that while not regulated as a public utility for most purposes, it meets the sales volume criteria for a "small public utility" that disposes of no more than 4 million MWh of energy annually. Warrior Run concludes that good cause exists to grant waiver of the regulatory requirements applicable to transmission providers.

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).

⁷ *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).

⁸ *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).

⁹ 18 C.F.R. § 35.28 (2014).

¹⁰ 18 C.F.R. pt. 37 (2014).

¹¹ 18 C.F.R. pt. 358 (2014).

¹² Transmittal Letter at 7.

II. Notice of Filing

12. Notice of Warrior Run's filing was published in the *Federal Register*, 80 Fed. Reg. 28,263 (2015), with motions to intervene, comments, and protests due on or before May 22, 2015. None was filed.

III. Discussion

13. The Commission finds the terms and conditions of the License Agreement to be just and reasonable and not unduly discriminatory or preferential. The License Agreement sets out the terms and conditions governing Warrior Run's license of the interconnection facilities and grant of other rights of use to AES ES Tait in connection with the construction, ownership, use, operation, and maintenance of the Warrior Run Battery Project and equipment at the Warrior Run site, and has been freely negotiated between Warrior Run and AES ES Tait. Accordingly, we will accept the proposed License Agreement for filing, to be effective June 15, 2015, as requested.

14. We also will grant the requested waivers. 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.¹³ Order No. 889 and Part 37 of the Commission's regulations require public utilities to establish an OASIS. Order Nos. 889, 2004,¹⁴ and 717¹⁵ and Part 358 of the Commission's regulations require public utilities to

¹³ See *Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities*, Order No. 807, FERC Stats. & Regs. ¶ 31,367 (2015). In Order No. 807, which will become effective June 30, 2015, 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. Because Warrior Run's requested effective date precedes the effective date of Order No. 807, we are required to address its request for waivers.

¹⁴ *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).

abide by certain Standards of Conduct.¹⁶ 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 890.¹⁷ 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 889.¹⁸ Order No. 717 did not change those criteria.¹⁹

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 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.²⁰

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 transmission facilities (rather than an integrated transmission grid); or (2) is a small

¹⁵ *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).

¹⁶ 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.

¹⁷ *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).

¹⁸ *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).

¹⁹ *See* Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

²⁰ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

public utility that owns, operates, or controls an integrated transmission grid, unless other circumstances are present that indicate that waiver would not be justified.²¹

17. 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).²²

18. Based on Warrior Run's representations, we find that the interconnection 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 Warrior Run's request for waiver of the requirements set forth in Order Nos. 888 and 890 and section 35.28, Part 37, and Part 358 of the Commission's regulations, as those pertain to the interconnection facilities. However, if Warrior Run 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.²³

19. The Commission also will grant Warrior Run's 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 as those requirements pertain to the interconnection facilities. We note that Warrior Run's 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.²⁴

²¹ *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.

²² *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*)).

²³ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

²⁴ *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).

Likewise, Warrior Run's waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint that Warrior Run has unfairly used its access to information to unfairly benefit itself or its affiliate.²⁵

20. We will grant Warrior Run's request for waiver of the requirement to provide a statement of its cost computations pursuant to section 35.12(b)(2)(ii) of the Commission's regulations.

The Commission orders:

(A) The License Agreement between Warrior Run and AES ES Tait is accepted for filing, as discussed in the body of this order, effective June 15, 2015, as requested.

(B) Warrior Run's requests for waiver of the Commission's OATT, OASIS, and Standards of Conduct requirements are granted, as discussed in the body of this order.

(C) Warrior Run's request for waiver of the relevant sections of Part 35 of the Commission's regulations is granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁵ *Id.* Warrior Run 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).