

151 FERC ¶ 61,216  
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.:

Pacific Wind Lessee, LLC,  
Catalina Solar Lessee, LLC,  
Catalina Solar 2, LLC

Docket Nos. ER15-1519-000  
ER15-1520-000  
(not consolidated)

ORDER ACCEPTING REVISED SHARED FACILITIES AGREEMENT AND  
CERTIFICATE OF CONCURRENCE AND  
REAFFIRMING PREVIOUSLY GRANTED WAIVERS

(Issued June 15, 2015)

1. In this order, the Commission accepts the revised Shared Facilities Agreement (revised SFA) filed in Docket No. ER15-1519-000 by Pacific Wind Lessee, LLC (Pacific Wind Lessee), Catalina Solar Lessee, LLC (Catalina Solar Lessee), and Catalina Solar 2, LLC (Catalina Solar 2) (collectively, Applicants), effective May 31, 2015, as requested. This order also accepts Catalina Solar 2's Certificate of Concurrence<sup>1</sup> to the revised SFA, filed in Docket No. ER15-1520-000. In addition, this order reaffirms the Commission's previous grants of waivers to the Applicants, pertaining to 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-Time Information System (OASIS) for the facilities.<sup>2</sup>

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<sup>1</sup> Catalina Solar 2 filed a Certificate of Concurrence in Docket No. ER15-1520-000 to adopt the Pacific Wind Lessee Rate Schedule No. 2, which is the SFA discussed herein.

<sup>2</sup> *Pacific Wind Lessee, LLC and Catalina Solar, LLC*, 141 FERC ¶ 61,122 (2012) (2012 Order). In that order, the Commission granted the requested waivers of the Commission's regulations regarding OATT, OASIS, and Standards of Conduct requirements when it accepted the original SFA for filing.

## **I. Background**

2. Pacific Wind Lessee is a wholly-owned subsidiary of EDF Renewable Energy, Inc. (EDF-RE). Pursuant to a structured financing arrangement with Pacific Wind, LLC (Pacific Wind), Pacific Wind Lessee manages and operates a 140 MW wind-powered generating facility in the Antelope Valley of Kern County, California. Pacific Wind's facility is interconnected with the Whirlwind Substation owned by Southern California Edison Company (SoCal Edison) within the balancing authority of the California Independent System Operator (CAISO).

3. Catalina Solar Lessee is a wholly-owned subsidiary of EDF-RE. Pursuant to a structured financing agreement with Catalina Solar, LLC, Catalina Solar Lessee manages and operates a 110 MW photovoltaic solar energy generating facility in Kern County, California. Catalina Solar Lessee's facility is interconnected with the Whirlwind Substation and all of the output of the facility is sold under a long-term power purchase agreement to San Diego Gas & Electric Company.

4. Catalina Solar 2 is a wholly-owned subsidiary of Dominion Solar Holdings, Inc. (Dominion).<sup>3</sup> Catalina Solar 2 is developing an 18 MW photovoltaic solar electric energy generating facility in Kern County, California. Catalina Solar 2's facility will be interconnected with the Whirlwind Substation and all of the output will be sold under a long-term power purchase agreement to SoCal Edison. Applicants explain that, when the original SFA was filed with the Commission in 2012, Catalina Solar 2 anticipated developing a 40 MW generating facility. However, Catalina Solar 2 is now developing a smaller project and has made a partial assignment of its co-tenancy interest in the shared interconnection facilities to another project company, Bar13 Solar, LLC, which is a wholly-owned subsidiary of EDF-RE.

## **II. Revised SFA and Certificate of Concurrence**

5. Applicants filed the revised SFA with the Commission on April 16, 2015 and a supplement to that filing on April 17, 2015. The revised SFA sets forth the terms and conditions pursuant to which the parties to the revised SFA share in the costs and co-own certain portions of the infrastructure required to install and operate their respective segments of the generation interconnection facilities. The parties of the revised SFA

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<sup>3</sup> The Commission approved the disposition of all the ownership interest in Catalina Solar 2, which was owned by EDF-RE, to Dominion in *Catalina Solar 2, LLC*, 149 FERC ¶ 62,172 (2014).

include Pacific Wind Lessee, Catalina Solar Lessee, and Catalina Solar 2,<sup>4</sup> as well as other project companies that are also developing generation facilities in Antelope Valley.

6. Pursuant to the terms of the revised SFA, the co-owners of the interconnection facilities under the revised SFA only have the right to use the amount of generation-tie line capacity necessary for the output of an owner's project, and the co-owners share in the costs in proportion to their rights to use the generation tie-line. No owner provides service to any other and none of the co-owners pays rates for the use of the facilities.

7. Specifically, Applicants state that the revisions to the SFA:

- Amend the processes and prerequisites under the SFA for approving major decisions of the Owners Committee;
- Amend the SFA to clarify that all applicable actions are to be done in accordance with the Settlement Agreement (as that term is defined in the SFA), which predated the execution of the original version of the SFA to resolve a dispute regarding issues outside of the Commission's jurisdiction;
- Amend and restate specified exhibits to the SFA;
- Amend the SFA to reflect a partial assignment to Bar13 Solar, LLC of Catalina Solar 2's interests in specified segments of the interconnection facilities, as described in the SFA, that will not be used by Catalina Solar 2 because of the smaller size of its project. Bar13 Solar, LLC has become a party to the SFA;
- Amend the SFA to state that the size of the Catalina Solar 2 generating facility has been reduced from 40 MW to 18 MW; and
- Update the notice information and the signature block of the SFA to reflect corporate name and ownership changes since the SFA was filed.

8. In its Certificate of Concurrence, Catalina Solar 2 states that it assents and concurs in the revised SFA and has filed the Certificate of Concurrence in lieu of a duplicative filing of the Pacific Wind Lessee, LLC Rate Schedule FERC No. 2.

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<sup>4</sup> Pacific Wind Lessee is a party to the revised SFA by virtue of its lease arrangement with Pacific Wind, and Catalina Solar Lessee is a party to the SFA by virtue of its lease arrangement with Catalina Solar.

### III. Requests for Waivers

9. Applicants request that the Commission reaffirm the 2012 Order, which granted waivers of the requirements under Order Nos. 888<sup>5</sup> and 890<sup>6</sup> of the Commission's regulations<sup>7</sup> to file an OATT, the requirements under Order No. 889<sup>8</sup> and Part 37 of the Commission's regulations<sup>9</sup> to establish an OASIS, and the requirements under sections 35.28, and Part 358 of the Commission's regulations<sup>10</sup> to comply with the Standards of Conduct for the shared facilities. Specifically, Applicants argue that the previously granted waivers are unaffected by the Commission's recent approval of the disposition of all of the ownership interests in Catalina Solar 2 to Dominion Solar Holdings, Inc.<sup>11</sup> They also request waiver of the Commission's prior notice requirement to allow the revised SFA to be effective as of May 31, 2015.

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<sup>5</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).

<sup>6</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>7</sup> 18 C.F.R. § 35.28 (2014).

<sup>8</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>9</sup> 18 C.F.R. pt. 37 (2014).

<sup>10</sup> 18 C.F.R. pt. 358 (2014).

<sup>11</sup> *See Catalina Solar 2, LLC*, 149 FERC ¶ 62,172 (2014).

10. In support of their request, the Applicants state that the shared facilities at issue here continue to be limited and discrete radial facilities and not an integrated transmission system. In addition, Applicants state that the generation lead lines are designed for the sole purpose of transmitting only the capacity of the Applicants' generation to the point of interconnection with the CAISO-controlled transmission grid. The Applicants maintain that electric power will flow over the lines in only two circumstances: (1) when power generated by the Applicants is being marketed at wholesale; and (2) when start-up, back-up, and maintenance power is being delivered to the Applicants' projects for their own use. The Applicants state that the shared facilities do not serve, and are not designed to service, other customers.

11. In addition, the Applicants contend that good cause exists for the Commission to reaffirm the grant of the previously granted waivers. The Applicants state that they continue to satisfy the Commission's prior criteria for such waivers and that imposing the subject regulations on the Applicants would entail a substantial burden without any offsetting benefits. Furthermore, the Applicants state that reaffirming the grant of the previously granted waivers would promote the Commission's public policy in favor of encouraging the development of new renewable energy generation resources.<sup>12</sup> Moreover, consistent with the Commission's requirements, the Applicants acknowledge that, if they receive a request for transmission service from a third party, they will either: (1) file an OATT with the Commission and satisfy all other applicable regulatory requirements; or (2) be bound by the obligations and procedures applicable to electric utilities under section 210 of the Federal Power Act,<sup>13</sup> whichever set of obligations is applicable at the time the third party request is received.

12. Finally, the Applicants request waiver of the Commission's 60-day prior notice requirement,<sup>14</sup> stating that a May 31, 2015 effective date is necessary to meet the schedules in various contractual obligations.<sup>15</sup>

#### **IV. Notice of Filings**

13. Notice of the Applicants' filing in Docket No. ER15-1519-000 and Catalina Solar 2's Certificate of Concurrence in ER15-1520-000 were published in the *Federal Register*, 80 Fed. Reg. 22,733 (2015) and 80 Fed. Reg. 22,731 (2015), respectively, with

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<sup>12</sup> See, e.g., *Southern California Edison Co.*, 133 FERC ¶ 61,107 at PP 3, 64, 68, *reh'g denied*, 133 FERC ¶ 61,255, at P 13 (2010).

<sup>13</sup> 16 U.S.C. § 824i (2012).

<sup>14</sup> 18 C.F.R. § 35.11 (2014).

<sup>15</sup> Transmittal Letter at 5.

interventions or protests due on or before May 7, 2015. No interventions or protests were filed.

## V. Discussion

14. The terms and conditions of the revised SFA appear to be just and reasonable, and, accordingly, we will accept the proposed revised SFA and Certificate of Concurrence, effective May 31, 2015, as requested.<sup>16</sup> The Commission also reaffirms the previous grant of waiver of Order Nos. 888, 889, and 890; section 35.28, Part 37, and Part 358 of the Commission's regulations, as discussed below.

15. 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. Though the parties to the SFA have changed, the transmission line components have not. As we determined in the 2012 Order, the transmission line components do not compromise an integrated system nor will they serve other customers not party to the SFA.<sup>17</sup> Accordingly, we will reaffirm the previous grant of waivers 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 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.<sup>18</sup>

16. The Commission will also reaffirm the previous grant of waivers 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 the 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

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<sup>16</sup> See *Central Hudson Gas & Elec. Corp., et al.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

<sup>17</sup> 2012 Order, 141 FERC ¶ 61,122 at P 19.

<sup>18</sup> *Black Creek Hydro Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996). 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, effective June 30, 2015. *Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities*, Order No. 807, FERC Stats. & Regs. ¶ 31,367 (2015). Accordingly, Applicants requested waiver because they proposed an effective date prior to June 30<sup>th</sup>.

entity evaluating its transmission needs could not get the information necessary to complete its evaluation.<sup>19</sup> Likewise, the Applicants' waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint that the Applicants have used their access to information to unfairly benefit themselves or their affiliates.<sup>20</sup>

The Commission orders:

(A) The Applicants' proposed revised SFA and Certificate of Concurrence are hereby accepted for filing, effective May 31, 2015, as requested, as discussed in the body of this order.

(B) The Applicants' previous grant of waivers is hereby reaffirmed, 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>19</sup> *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228, at P 23 (2005) (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997); *Easton Utilities Commission*, 83 FERC ¶ 61,334, at 62,343 (1998)).

<sup>20</sup> *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).